



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 16 जून, 2014 / 26 ज्येष्ठ, 1936

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

NOTIFICATION

Shimla, the 11th June, 2014

No: HPERC/438.—WHEREAS the Himachal Pradesh Electricity Regulatory Commission had notified the Himachal Pradesh Electricity Supply Code, 2009, which was published in the Rajpatra, Himachal Pradesh, dated 29th May, 2009;

AND WHEREAS over the period based experience and also during tariff hearings and in the consultative meetings, it has been observed that there are opportunities for facilitating efficiencies, by making appropriate changes in the Supply Code, aimed at simplification, transparency and ease in doing business;

AND WHEREAS accordingly, the Commission notified the draft Regulations to amend the Himachal Pradesh Electricity Supply Code, 2009 published in the Rajpatra, Himachal Pradesh, dated 28th April, 2014, as required under sub-section (3) of section 181 of the Electricity Act, 2003, rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005. A notice for inviting suggestions and objections from the public and the stakeholders was published in the leading newspapers viz. "The Tribune" (English) and "Amar Ujala" (Hindi) on 27th April, 2014 and also hosted it on the Commission's website. The Commission also circulated the draft Regulations to the Supply Code Review Panel, constituted under para 1.3 of the Himachal Pradesh Electricity Supply Code, 2009, for their consideration and recommendations thereon;

AND WHEREAS in response to above public notice, the Commission received response from various stakeholders vis-a-vis the comments/recommendations of the Supply Code Review Panel, which have been duly considered by the Commission while finalizing these Regulations.

NOW THEREFORE, in exercise of the powers conferred by section 50 and clause(x) of subsection (2) of section 181 of the Electricity Act, 2003 (36 of 2003), read with section 21 of the General Clauses Act, 1897 (10 of 1897), and all other powers enabling it in this behalf, the Himachal Pradesh Electricity Regulatory Commission hereby amends the Himachal Pradesh Electricity Supply Code, 2009 as under :--

The Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014

1. Short title and commencement.—(1) These regulations may be called the Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014.

(2) These regulations shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

2. Insertion of para 1.1.4.1.— In the Himachal Pradesh Electricity Supply Code, 2009 (hereinafter referred as, "the said Code"), the following para 1.1.4.1 shall be inserted; namely:--

"1.1.4.1 Where any regulations, referred to in the Code, undergo any amendment, modification or reenactment, after commencement of the Code, the references in the Code to such regulations shall, unless a different intention appears, be construed as references to the provisions so amended, modified or re-enacted."

3. Amendment in para 2.1.6.— In para 2.6.1 of the said Code,--

- (a) in the heading, for the words "Standard Supply Voltage", the words "Standard Supply Voltage/Supply Voltage" shall be substituted; and
- (b) for the existing sub-para 2.1.6.1, the following sub-paras 2.16.1(A), 2.1.6.1(B) and 2.1.6.1(C) shall be substituted; namely:--

"2.1.6.1(A) The standard supply voltage shall mean the standard voltage at which electricity shall be given to the consumer through a common or dedicated or joint dedicated feeder without payment of any lower voltage supply surcharge(LVSS). Depending upon the connected load(kW or MW), contract demand (kVA or MVA), nature of load and existence of a voltage (volts/kV) and phase in the relevant distribution system, the standard supply voltage for a consumer shall be as provided in clauses (a) and (b) of this sub-para and sub-para 2.1.6.1(C)-

- (a) The maximum limits of connected load (kW or MW) and contract demand (kVA or MVA) for the supply of power at a voltage, shall be as under—

Sr. No.	Standard Supply Voltage	Maximum Connected Load	Maximum Contract Demand
1.	Single phase 230 volts or three phase 415 volts or 2.2 kV; (for supplies not involving special category loads).	50 kW	50 kVA
2.	Three phase 11 kV or 22 kV; (for supplies not involving special category loads).	3 MW	2.2 MVA
3.	Three phase 33 kV	12 MW	10 MVA
4.	Three phase 66 kV	14 MW	12 MVA
5.	Three phase 132 kV or 220 kV	No limits	

Provided that where special category loads are involved, the standard supply voltage shall be 11 kV or 22 kV, as may exist on the relevant distribution system, if –

- (i) the total connected load does not exceed 1 MW, irrespective of special category loads; or
- (ii) the total quantum of connected load in respect of special category loads does not exceed 750 kW within the overall limit of total connected load upto 3 MW and total contract demand upto 2.2 MVA:

Provided further that, if neither of the limits given in the first proviso, in relation to supplies involving special category loads, are adhered to, the standard supply voltage shall be 33 kV or the appropriate higher voltage in accordance with the limits specified in this clause:

Provided further that where a consumer having connected load of not more than 50 kW is already getting supply at LT voltage immediately before commencement of the Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014, he shall continue to be covered under a LT standard voltage (i.e. single phase 230 volts or three phase 415 volts) irrespective of contract demand already sanctioned in his favour, so long as he does not further extend his connected load or contract demand beyond the specified limits of 50 kW or 50 kVA respectively:

Provided further that where a consumer is getting supply at a voltage higher than the standard supply voltage as per the said specified limits, he shall continue to get supply at such higher voltage without any rebate for higher voltage supply.

- (b) Where the connected load or contract demand exceeds the relevant ceiling limit specified in clause (a), the appropriate higher voltage at which both such limits can be adhered to, shall be considered as standard supply voltage and there shall be no minimum limits for supply of power at a particular voltage.

2.1.6.1(B) Where the consumer seeks supply of power at a voltage lower than the standard supply voltage as per sub-para 2.1.6.1(A), the licensee shall supply power at such lower voltage subject to the maximum limits of connected load and contract demand as specified in this sub-para;

payment of lower voltage supply surcharge (LVSS) by the consumer at the rates given in the relevant tariff order applicable from time to time; and other conditions, as may be relevant, specified in this subpara or in sub-para 2.1.6.1(C) or elsewhere in this Code :--

Sr. No.	Supply Voltage	Description	Maximum Connected Load	Maximum Contract Demand
1.	11 kV (for supplies not involving special category loads)	(a) If 22 kV or 33 kV voltage level exists in the relevant distribution system.	5 MW	4 MVA
		(b) If 22 kV or 33 kV voltage level does not exist in the relevant distribution system.	6 MW	5 MVA
2.	22 kV (for supplies not involving special category loads)	(a) If 33 kV voltage level exists in the relevant distribution system.	6 MW	5 MVA
		(b) If 33 kV voltage level does not exist in the relevant distribution system.	7 MW	5.5 MVA
3.	33 kV	(a) If 66 kV voltage level exists in the relevant distribution system.	15 MW	12 MVA
		(b) If 66 kV voltage level does not exist in the relevant distribution system.	18 MW	14 MVA
4.	4. 66 kV	(a) Through a common or dedicated or joint dedicated feeder	18 MW	14 MVA
		(b) Through a dedicated or joint dedicated feeder	30 MW	24 MVA

Provided that all such supplies, excepting the same at Sr. No.4(a), shall be given through dedicated or joint dedicated feeders only and that in case of Sr. No. 4(a) the supply shall be given through a common or dedicated or joint dedicated feeder:

Provided further that in case of supply involving special category loads, the same shall be given at 11 kV or 22 kV subject to further conditions that the total connected load in respect of the special category loads does not exceed 1.5 MW within the total connected load upto 3 MW and contract demand upto 2.2 MVA and that the supply is to be given through a dedicated feeder or a joint dedicated feeder emanating from EHV sub-station:

Provided further that if the conditions given in second proviso, in relation to the supplies involving special category loads, are not adhered to, the supply shall be given at 33 kV or at appropriate higher voltage depending on the total connected load and contract demand:

Provided further that the provisions of this sub-para, shall be further subject to the following condition:--

- (i) that the voltage regulation limits shall have to be adhered to while deciding the supply arrangements;

- (ii) that in case of special category loads and other such loads which can cause disturbances in the power distribution system, the consumer shall provide suitable protection equipments as per the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 and other prudent practices to adequately insulate the distribution system from the disturbance caused by such loads;
- (iii) that the consumer already getting supply at higher voltage as compared to the standard supply voltage or the limits given in this sub-para, shall not be entitled to any higher voltage supply rebate; and
- (iv) that in cases of joint dedicated feeder, the limits of maximum connected load and maximum contract demand as per this subpara shall be applicable for the summation of the connected loads and contract demands of both the consumers.

Explanation.—For the purposes of this sub-para,--

- (a) “dedicated feeder” means the electric supply line emanating from the sub-station of the licensee through which electricity is, or is intended to be, supplied to a single consumer; and
- (b) “joint dedicated feeder” means the electric supply line emanating from the sub-station of the licensee through which electricity is, or is intended to be, supplied to two consumers.

2.1.6.1(C) (i) Where the contract demand has not been applied for or sanctioned, the limit corresponding to 90% of the connected load (in kW) converted into kVA by adopting power factor of 0.9 shall be deemed as the contract demand.

(ii) The supply shall be made at the minimum voltage level at which all the relevant limits and conditions are adhered to. However, if the consumer opts for supply of power at a voltage higher than the standard supply voltage, the licensee shall allow the same excepting the cases in which there may be some constraint.

(iii) Where the connected load or contract demand is to be enhanced, the standard supply voltage under sub-para 2.1.6.1 (A) and the supply voltage under sub-para 2.1.6.1 (B) shall be redetermined as per the provisions under the said paras based on enhanced connected load and enhanced contract demand.

Explanation.-- For the purposes of sub-paras 2.1.6.1(A) and 2.1.6.1(B), “special category loads” means furnace loads and mass induction heating loads and shall also include any other load as the Commission may, after taking into consideration electrical characteristics and its impact on the distribution system, by order, declare it to be a special category load.”

4. Amendment of para 3.1.1.—In para 3.1.1 of the said Code, for the words “The Application and Agreement Form will be available at the designated offices of the licensee on payment of fee as fixed by the Commission in the Schedule of General and Service Charges in the tariff order. A specimen of the Application and Agreement form will also be available on the website of the licensee and can be downloaded, if required, and in such a case, the fee will be paid by the applicant at the time of its filing”, the words “The Application and Agreement Form will be available free of cost at the designated offices of the licensee and on its website” shall be substituted.

5. Amendment of para 3.1.2.—At the end of para 3.1.2. of the said Code, the following para 3.1.2 shall be inserted; namely:--

“3.1.2 The consumer may, if he considers it expedient to do so, make online application to the licensee and deliver by post or by hand delivery the hard copy of the original Application and Agreement Form, alongwith the enlisted documents, to the licensee at its designated office.”

6. Insertion of para 3.1.4.1.—In the said Code, the following para 3.1.4.1 shall be inserted; namely:--

“3.1.4.1 Where an Application and Agreement Form is submitted online under para 3.1.2, the demand notice, mentioned in para 3.1.4, shall be served electronically i.e. through e-mail/SMS and its hard copy shall also be sent to the applicant/consumer by post or by hand delivery.”

7. Amendment of para 3.2.— For the existing para 3.2 of the said Code, the following para shall be substituted; namely:--

“3.2 Power Availability Certificate.—

3.2.1 Where the contract demand for a new or additional load exceeds 100 kVA, the applicant will submit the feasibility clearance i.e. Power Availability Certificate (PAC) along with the Application and Agreement Form which will be available free of cost at the designated offices of the licensee and on its website.

3.2.2 The consumer shall apply for the grant of Power Availability Certificate, on payment of advance cost share towards infrastructural developmental charges, calculated @ Rs.1000 per kVA of the contract demand applied for.

3.2.3 Where the consumer submits online application, and makes online payment of advance cost share, for grant of Power Availability Certificate under para 3.2.2, he shall also submit hard copy of the application and proof of the payment made, to the licensee at its designated office, either by post or by hand delivery.

3.2.4 The licensee shall grant the Power Availability Certificate within thirty days of the receipt of application, or within such period as may be extended, with the approval of the Commission, and the licensee shall also convey such approval to the online consumer/applicant electronically i.e. through e-mail/SMS apart from sending him the hard copy of the said approval by post or by hand delivery.

3.2.5 The Power Availability Certificate mentioned in para 3.2.3 shall be valid for a period of three years or for such shorter period as may be mutually agreed upon by the licensee and the applicant:

Provided that the validity period may be extended, from time to time, as may be mutually agreed upon by the applicant and the licensee.

3.2.6 The applicant may, after grant of Power Availability Certificate mentioned in para 3.2.4, submit the application for supply of electricity to the premises and the licensee shall adjust the amount received as the advance cost share towards the amount recoverable under

the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012:

Provided that if the applicant submits application for a contract demand lesser than the contract demand for which Power Availability Certificate has been issued, the amount of advance cost share shall be adjusted as under—

- | | | |
|-----|---|--|
| (a) | if the applicant intends to avail the balance contract demand at a subsequent stage during the validity period of the Power Availability Certificate. | On pro-rata basis. |
| (b) | if the applicant expresses his intention not to take supply for the balance contract demand for which Power Availability Certificate was issued. | Full amount of the advance cost share deposited by the applicant shall be adjusted after deducting therefrom 20% of the proportionate amount deposited as advance cost share in respect of such contract demand as is not to be availed. |

3.2.7 Where the applicant who has been granted the Power Availability Certificate (PAC) fails to submit the application(s) or declines to take supply for the full contract demand for which Power Availability Certificate was granted, within the validity period, the advance cost share, not adjusted as per para 3.2.6, shall be refunded after deducting therefrom 20% of the proportionate amount of the advance cost share deposited in respect of the contract demand which is not to be availed.

Illustration.—If the Power Availability Certificate is issued for 3000 kVA contract demand, but application is submitted or supply is taken only for 2000 kVA contract demand, 20% of the advance cost share pertaining to 1000 kVA contract demand shall be deducted.

3.2.8 The refund of the refundable amount of advance cost share as per para 3.2.7 shall be made within 30 days from the expiry of validity period or from an earlier date on which such applicant expresses his intention not to take supply for full or part of the contract demand for which the Power Availability Certificate was issued and requests for refund of such amount.”

8. Substitution of para 3.8.— For existing sub-para 3.8 of the said Code, the following para 3.8 shall be substituted; namely:--

“3.8 Refund of initial security and charges.—

3.8.1 On withdrawal of application for new connection/additional load, whether permanent or temporary, the amount received from the applicant on account of the initial security deposit under the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005 and on account of the charges/costs under the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure) Regulations, 2012 shall be refunded to the applicant after deducting therefrom:—

- (i) 10% of the initial security amount deposited by the applicant; and
- (ii) the actual expenditure computed as per regulation 9 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure) Regulations, 2012, by duly taking into account the deductions to be made out of all the relevant components

such as infrastructure development charges, cost of service line and other exclusive works, as detailed in the said regulations:

Provided that in case of withdrawal of application for temporary connection, no deduction shall be made on account of clause (i) if no extension of distribution mains or commissioning of a new sub-station is involved.

3.8.2 Where an agreement for supply of electricity is terminated as per the Conditions of Supply or provisions of this Code, the licensee will refund the initial/additional security, after making adjustments for the amounts outstanding against the consumer, within one month of the date of termination of the agreement as per the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005.”

9. Substitution of para 3.9.— For the existing para 3.9 of the said Code, the following para 3.9 shall be substituted; namely:--

“3.9 Delay to take supply or avail contract demand.—

In case of supplies involving two part tariff, where the licensee has completed the work required for supply of electricity to an applicant, but the applicant is not ready or delays to receive supply of electricity or does not avail the full contract demand, the licensee shall, after a notice of sixty days, charge the demand charges on the sanctioned contract demand at the rates given in the relevant tariff order subject to following limits—

S. No.	Description	Minimum limit
(i)	For initial six months from the expiry of notice period or date of release of connection, whichever is earlier;	Maximum demand actually availed, if any.
(ii)	For next six months;	Maximum demand actually availed, if any, or 30% of the total sanctioned contract demand, whichever is higher.
(iii)	After expiry of the period provided in item (ii) above;	Maximum demand actually availed, if any, or 50% of the total sanctioned contract demand, whichever is higher.

Provided that the minimum limits, as given in items (ii) and (iii), shall not be further decreased on the account of tariff provisions relating to charging of demand charges for lesser quantum of demand due to non utilization or temporary reduction of contract demand.”

10. Insertion of para 3.10.—In the said Code, the following para 3.10 shall be inserted; namely:--

“3.10 Temporary revision of contract demand.—

The consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition—

- (a) that the consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to a further condition that the contract demand

shall not be reduced below the lowest limit of contract demand as per the tariff category (or any subcategory thereof) applicable to him;

- (b) that the consumer shall not be entitled to revise the contract demand more than twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months;
- (c) that the consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;
- (d) that in cases where the contract demand is reduced under this mechanism, such reduced contract demand shall be applicable for billing purposes; and
- (e) that in cases where the consumer gets his contract demand reduced permanently, the limit under clause (a) shall be considered with respect to such reduced contract demand, but such reduction shall not be considered to have been made under this mechanism and the time gap of 3 months as per clause (b) shall be reckoned from the date from which the demand was last revised under this mechanism.

Illustration.—If a consumer who is having sanctioned contract demand of 10 MVA temporarily revises the contract demand to 6 MVA w.e.f. 01.08.2014 under this mechanism but gets his sanctioned contract demand permanently reduced to 8 MVA w.e.f. 01.09.2014, he shall have to pay charges based on 6 MVA contract demand till 31.10.2014 (i.e. till the expiry of 3 months period from the date at which the contract demand was last revised i.e. from 01.08.2014). However, if the contract demand is to be reduced permanently to lesser than 6 MVA (say 4 MVA as on 01.09.2014), the demand charges would have been based on a contract demand of 4 MVA during the period upto 31.10.2014.”

11. Amendment of para 5.2.— In para 5.2 of the said Code,—

- (a) for the Explanation to sub-para 5.2.1, the following sub-para 5.2.1.1 and 5.2.1.2 shall be substituted; namely:—

“5.2.1.1 Monthly billing cycle shall be applicable in urban areas including industrial areas, District headquarters, Municipal Corporation area, Municipal Council areas, Nagar Panchayat areas, Special Area Development Authority areas, and for the other areas, except for tribal and difficult areas as notified by Government of Himachal Pradesh under the policy for transfer of employees, the billing cycle shall be bi-monthly. In case of the tribal and difficult areas the billing cycle shall be bi-monthly, except for the winter months for which the billing cycle shall not be of more than 4 months.

5.2.1.2 Where billing cycle is of more than one month, the consumer shall have option to pay, monthly or periodic charges, on average or estimated consumption charges basis or any other basis without waiting for bills to be issued. Such amount will be treated as advance and adjusted in the regular bills to be issued subsequently.”;

- (b) at the end of para 5.2.5, the following sentence shall be added; namely:—

“However in case any amount of the bill is disputed by the consumer, such disputed amount as well as the late payment surcharge thereon shall also be reflected, and continue to be reflected, separately in the ledgers, till such time such amount remains unpaid/unsettled, so that total updated quantum of such disputed amount is readily available. Such details shall be made available to the consumer on request.”; and

(c) at the end of para 5.2.9, the following sentence be added; namely:—

“However, the licensee shall, for delivery/intimation of bills adopt fastest, cost effective, reliable and assured mode such as electronic mode like e-mail and SMS.”

12. Amendment of para 5.3.- In para 5.3 of the said Code,—

(a) in the beginning of para 5.3.1, the following sentence shall be added; namely:—

“The consumer shall be liable to pay electricity charges for the month on the first day after the consumption period.”; and

(b) at the end, the following sub-para 5.3.8 shall be inserted; namely:—

“5.3.8 The part payment of the bill shall, with the prior approval of the licensee, be accepted subject to—

- (i) the compliance of the terms and conditions, if any, subject to which the acceptance of the part payment is permitted;
- (ii) the late payment surcharge shall be payable on the outstanding amount of the bill; and
- (iii) such payment shall be deemed to be without prejudice to the licensee’s right to disconnect the supply to the consumer for nonpayment, unless the licensee specifically undertakes not to initiate any action to disconnect the supply for non-payment of such outstanding amount for certain period.”

13. Insertion of para 6.1.1.— At the end of para 6.1.1 of the said Code, the following shall be inserted; namely:—

“However increase in the connected load, without permission from the licensee, shall not be considered as unauthorized use of electricity under section 126 of the Act, if —

- (i) there is no change in applicable tariff category, or sub-category thereof, as a result of increase in connected load; and
- (ii) the actual demand (kVA) does not exceed the maximum limit arrived at by converting the sanctioned connected load (kW) into kVA, based on an assumed power factor of 0.9, by more than 10 kVA:

Illustration.— if the sanctioned connected load of the consumer is 360kW and actual demand is 410 kVA or less it shall not be considered as unauthorized use of electricity under the section 126 of the Act even if the sanctioned contact demand is less than 410 kVA, so long as the conditions under other clauses are adhered to; and

- (iii) there is no usage of electricity through a tampered meter; and

- (iv) the electricity is used only for the purpose for which the same was authorized; and
- (v) the electricity is used only for the premises or the areas for which the supply of electricity is authorized; and
- (vi) the increase in connected load does not exceed the limit computed as under—
 - (a) 10 kW in case where the sanctioned connected load is upto 100 kW; and
 - (b) 10% of the sanctioned connected load subject to a maximum of 200 kW, in case where the sanctioned connected load is more than 100 kW:

Provided that where the extension of connected load comes to the notice of the licensee, irrespective of the fact, whether or not, such extension is considered to be unauthorized use of supply under section 126 of the Act, it shall, apart from taking any other steps as may be necessary, give an option to the consumer to either get such extension(s) regularized by completing the formalities or to remove the extension(s) of the connected load. The licensee shall be entitled to disconnect the supply if the consumer does not take any steps in this direction even after service of a notice on him by the licensee. However, the licensee may disconnect the supply temporarily even without a notice if it reasonably believes that continuation of supply is likely to result in loss of human or animal life or injury to a human being or any animal or damage to property.”

14. Insertion in para 7.1.1.— In the said Code, at the end of clause (h) under para 7.1.1, the following proviso shall be inserted; namely:--

“Provided that the disconnection of supply under clause (h) shall be made after prior intimation to the consumer.”

15. Insertion in para 7.1.2.— In the said Code, after existing second proviso to para 7.1.2, the following third proviso shall be added; namely:--

“Provided further that in respect of the period during which the supply remains disconnected temporarily for any of the aforementioned reasons, the demand charges as per the tariff order shall be charged only for 10% of the total sanctioned contract demand. In case the defaulting consumer permanently surrenders a part of his sanctioned contract demand during this period, the demand charges shall be levied for 10% of the balance contract demand.”

16. Amendment of ANNEXURE-A.— At the end of para (1) of the ANNEXURE-A to the said Code, the following clause (d) shall be inserted; namely :--

“(d) Where the applicable Schedule of Tariff provides for the rates in respect of the violation charges, the assessment shall be made by taking such rates into account. The relevant charges as per the tariff order applicable, from time to time, such as contract demand violation charges, shall continue to be applicable even if the violations, if any, do not constitute unauthorized use of electricity under section 126 of the Act.”

By order of the Commission
Sd/-
Secretary.

OFFICE OF THE DISTRICT COLLECTOR, SHIMLA, DISTRICT SHIMLA, (H.P.)

NOTIFICATION

Dated:.....

No. FDS-SML-7-8/04.—In supression of all previous notification and in exercise of the powers vested in me under clause 3(1),4(a)(b)(c), 9(a)(i) (ii)(iii) and 9(b) of the Kerosene Oil (Restriction on Use and Fixation of Ceiling Price) Order, 1993, and clause 3(i)(c),9(a) and 9(b) of the H.P. Hoarding & Profiteering Prevention Order,1977, I, Dinesh Malhotra IAS, Distt. Collector, Shimla, do hereby renotify the route chart for the distribution of SKO to the fair price shops/kerosene oil retail outlets duly authorised in the distt. under the H.P. Specified Articles (Regulation of Distribution) Order, 2003 as under:—

S. No	Name of K/oil Retailers attached with K/oil wholesalers	Consumer Without Gas	Number of SBC	Temporary	Total	Allotted Quantity	Retail Sale Rate
	Swedashi Enterprises, Dhalli						As fixed by the Distt. Collector vide Notification No.FDS-SML-7-8/04-9901-10000 dated 30-11-13
1.	Seema Devi Rahighat	285	131	0	416	1500	
2.	CMP Society, Sandhu	220	200	0	420	1000	
3.	Kapil Chandel, Matiana	282	136	0	418	1500	
4.	Bhawani General Store, Matiana	110	194	0	304	1000	
5.	Abhimanu Shyam, Shilaru	125	188	0	313	1500	
6.	Rikshit Kumar, Sandhu	250	150	0	400	1500	
7.	Gian Sharma, Shilaru	115	141	0	256	1420	
8.	Shilaroo CAS, Shilaroo	116	44	0	160	1000	
9.	Parveen Vashisht, Narkanda	188	73	0	261	880	
10.	Kotgarh CMP Society, Thanedhar	123	101	0	224	880	
11.	Lathi CAS, Kumarsain	84	131	0	215	880	
12.	Mellan CAS, Mellan	103	137	0	240	880	
13.	Mohan Lal Verma, Madhawani	60	71	0	131	660	
14.	Dinesh Kumar, Bithal	192	111	0	303	1500	
15.	Dalan CAS, Dalan	145	107	20	272	880	
16.	Kirti CAS, Kirti	43	41	0	84	440	
17.	Dharmender Mehta, Sainj	43	0	0	43	440	
18.	Diwan Chand & Bros., Kangal	165	56	0	221	660	
19.	Tikam Dass, Sainj	50	9	0	59	440	
20.	Shiwan CAS, Shiwan	178	79	0	257	880	
21.	Liaq Ram, Baragaon	110	90	0	200	660	
22.	Dhaneshwari Coop Cons.Store Bhareli	127	92	0	219	660	
23.	Anjana Verma, Kui	89	147	0	236	660	
24.	Oddi FG Society, Darog *	0	0	0	0	160	
25.	Harganag Coop. Store, Khunipanoli	0	0	0	0	440	
26.	Shalat CAS, Oddi *	0	0	0	0	440	

27.	Vipin Kumar, Baha	116	0	0	116	440	
28.	Chaman Lal, Nankhari	0	420	0	420	880	
29.	Punan Coop. Store, Punan	101	28	25	154	880	
30.	Mangal Singh, Chedi	81	181	30	292	880	
31.	The Jahoo Raik CAS, Kholighat	64	191	0	255	880	
32.	Joginder Joshi, Thaili Chakhti	178	115	0	293	1200	
33.	CAS, Nankhari	456	0	0	456	400	
34.	Joginder Lal, Sunni	76	67	0	143	660	
35.	Paro Provision Store, Sunni	65	192	0	257	660	
36.	Mahinder Daily Needs, Sunni	163	175	0	338	1200	
37.	Hem Chand Bihari Lal, Palyar	68	77	0	145	880	
38.	Narayan Dass, Gumma	295	267	0	562	1800	
39.	Dhani Ram, Jaisi	144	180	0	324	1000	
40.	Bhim Singh & Sons, Durgapur	64	74	0	138	660	
41.	Kamal Jeet, Jubbar *	0	0	0	0	0	
42.	Joginder Thakur, Jalog	88	100	0	188	660	
43.	FPS, Thachi	44	65	0	109	1000	
44.	HPSCSC, Pujarli	0	0	0	0	880	
45.	Vijay CMP Soci Bachunch Rohru	167	199	0	366	660	
46.	Kiarkigarh FG Society, Jaghothinala	82	39	0	121	660	
47.	Vijay CMP Soci Bachunch at Machoti	140	80	0	220	440	
48.	Devi Ram, Dhalli	93	133	0	226	1000	
49.	Amar Store, Dhalli	75	37	0	112	880	
50.	Baldian CMP Society, Baldian *	130	125	8	263	440	
51.	Aman Sood, Mashobra	380	82	0	462	1500	
52.	Keonthal CMP, Kufri	154	0	1	155	880	
53.	Chamyana CMP Society, Kamalanagar	154	19	7	180	1500	
54.	Karoli CMP, Koti	469	227	0	696	1800	
55.	Kuldeep Kumar, Dublu *	0	0	0	0	0	
56.	Shilpa Kumari, Junga	44	32	0	76	440	
57.	Surinder Verma, Mehli	442	36	6	484	3500	
58.	S.C.Store, Kamlanagar	135	148	0	0	1800	
59.	Kumar Bros., Kufri	95	84	0	0	880	
60.	Suman Kishore, Alampur	81	46	0	127	880	
61.	HPSCSC, Sawra	164	127	0	291	1200	
62.	HPSCSC, Patsari	191	201	0	392	880	
63.	Devta Mahasu Coop. Store, Samra	70	20	0	90	660	
64.	Rudra CMP Society, Badshal	85	40	0	125	660	
65.	CMP, Deoli	0	0	0	0	440	

66.	Dogra Valley CMP, Tikkar	109	83	0	192	880	
67.	HPSCSC, Tikkar	0	0	0	0	880	
68.	HPSCSC, Melthi	0	0	0	0	880	
69.	HPSCSC, Mandhol	113	120	0	233	880	
70.	HPSCSC, Sheelghat	0	0	0	0	880	
71.	Rupal Sood, Sanjauli	269	70	30	369	1200	
72.	Narvada Devi, Panthaghati	234	65	0	299	1700	
73.	Pawan Kumar, Rajhana	90	43	0	133	660	
74.	Rita Thakur, Panthaghati	138	84	97	319	1200	
75.	Rattan Chand, Shanhan	130	20	30	180	1000	
76.	Vinod Kumar, Shahnan	230	40	0	270	1000	
77.	Partap Singh, Fagu	262	188	0	450	1500	
78.	Sansar Chand, Rohru *	0	0	0	0	420	
						72000	
Rekha Oil Company, Chopal							
1.	CMP Society, Kuthar	350	266	0	616	1500	
2.	Parveen Sood, Deha	153	40	0	193	880	
3.	Chaman Lal Naveen Kumar, Lelupul	194	332	0	526	1420	
4.	Rai Singh Prem Singh, Deha	119	82	0	201	880	
5.	Shiv Ram, Naina	230	71	0	301	1000	
6.	Bhagat Ram, Maipul	145	165	0	310	880	
7.	Beli Ram Laxman Singh, Deha	191	97	0	288	880	
8.	CMP Society, Deori Khaneti	272	104	0	376	1180	
9.	Tehsil Union, Chuni, Kiari	188	23	0	211	880	
10.	Bal Krishan, Kiari	111	327	0	438	880	
11.	Saraswati CAS, Dakhal	0	0	0	0	880	
12.	Vikram Bragta, Tehtoli	55	107	0	162	660	
13.	CAS, Bakhhol	0	0	0	0	880	
14.	HPSCSC, Pulbahal	128	211	0	339	1000	
15.	HPSCSC, Baghi, (Chopal)	280	178	0	458	2000	
16.	HPSCSC, Jhikanipul	124	158	38	320	1000	
17.	HPSCSC, Bharanu	313	82	0	395	1000	
18.	HPSCSC, Nerwa	281	317	0	598	1500	
19.	CMP Soc Bhathinalla	163	128	8	0	1000	
20.	HPSCSC, Mashrah	233	115	0	348	880	
21.	HPSCSC, Chopal	511	211	81	803	2000	
22.	Salim Shekh, Dwada	164	30	0	194	880	
23.	Shiwalik Consumer Store, Minda	172	100	0	272	880	
24.	CMP Society, Antrawali	377	60	2	439	880	
25.	HPSCSC, Maraog	135	147	0	282	880	
26.	HPSCSC, Sarain	113	87	0	200	880	
27.	HPSCSC, Kupvi	230	433	0	663	2000	
28.	CMP, Mahasu	0	0	0	0	880	

29.	Kashavdeen, Churubag *	0	0	0	0	0	
30.	Suresh Kumar, Hulli	0	0	0	0	1000	
31.	Chet Ram Chhaila	130	182	0	312	1000	
32.	Yogeshwar Dutt, Mohari	301	237	0	538	2500	
33.	Hardev Sharma, Chhaila	348	442	0	790	3000	
34.	Kamla Sharma, Theog	185	321	0	506	1200	
35.	Sohan Verma, Theog	130	470	0	600	1500	
36.	Sheela Sharma, Theog	202	133	0	335	1180	
37.	Sanjeev Kumar, Gumma	0	0	0	0	1500	
38.	The Parala Harijan Coop Soc Sainj (Theog)	119	162	0	281	660	
						44000	
Krishna Coal Company, Bus Stand, Shimla							
1.	Ramesh Soni, Badhal	200	78	15	293	2000	
2.	Hari Om Dutt Nagar *	0	0	0	0	0	
3.	Hemant Sharma, Dutt Nagar	241	32	0	273	1200	
4.	Shahdhar Coop. Cons. Store, Shahdhar	138	25	0	163	880	
5.	Anil Kumar, Tayawal	188	29	4	221	880	
6.	CAS, Sarahan	183	150	2	335	880	
7.	Sanjay Kumar, Chuhabag	318	66	0	384	2000	
8.	Rampur Tehsil Union, Rampur	662	53	22	737	5500	
9.	Ranvir Singh, Chuhabag	145	115	0	260	1000	
10.	Vikesh Chauhan, Chuhabag	78	49	0	127	660	
11.	CAS, Sarpara at Sikaseri	78	19	0	97	880	
12.	CAS, Nirth *	0	0	0	0	400	
13.	Murat Singh, Jhakri	193	14	83	290	1500	
14.	Hari Chand, Jhakri	215	78	49	342	1520	
15.	Lachhu Ram, Jhakri	200	42	0	242	1500	
16.	Ramesh Chand, Padamnagar	156	98	0	254	1200	
17.	Ramesh Chand Nirsu *	0	0	0	0	0	
18.	Keshav Ram, Dhenda	290	315	0	605	2600	
19.	Madan Lal, Jubbarhatti	223	111	0	334	1500	
20.	Babu Ram, Rouri	120	155	0	275	1500	
21.	STU, Branch Dhami	267	243	0	510	1200	
22.	Sohan Singh, Panesh	200	164	0	364	1500	
23.	Rampuri CAS, Rampuri	138	153	0	291	1200	
24.	Virender Kumar, Ghroag	245	65	0	310	1500	
25.	Om Parkash, Ghanahatti	379	35	0	414	1540	
26.	Sunita Malhotra, Badehari	87	18	0	105	660	
27.	Ram Sawroop, Nabha	33	46	0	79	660	
28.	Bittu, Krishnanagar	0	0	0	0	660	
29.	Naresh Chand, Nabha	82	45	0	127	660	
30.	Ashok Sood, Kaithu	0	0	0	0	660	
31.	Sushil Kumar, Krishnanagar	56	87	0	143	660	

32.	Des Raj & Sons, Ganj Bazar	251	201	80	532	4000	
33.	Dhiraj Kumar, Motor Barrier	123	141	0	264	1500	
						44000	
Jagdamba Oil Company, Motor Barrier, Shimla							
1.	Roshan Lal Soni Sarahan	273	0	19	292	880	
2.	Kewal Ram, Racholi	673	59	35	767	4000	
3.	Prem Chand, Dobi	121	35	0	156	660	
4.	Sunder Singh, Dofda	178	75	0	253	880	
5.	Satpal, Rawni	130	17	30	177	1000	
6.	Mohan Lal, Bonda	160	80	0	240	1200	
7.	Rajni Bala, Ganvi (Panchgaon)	195	2	0	197	1000	
8.	Bhupinder Kumar, Kiar *	0	0	0	0	0	
9.	CAS, Kinnu	125	80	100	305	1000	
10.	Vidya Chand, Bathara	185	29	40	254	1000	
11.	Sher Singh Soni, Sarahan	117	25	0	142	880	
12.	Salig Ram, Kaley	121	80	0	201	880	
13.	Kalu Ram, Gaura	163	26	0	189	440	
14.	Anil Kumar, Badawali	94	36	0	130	440	
15.	Coop. Consumer Store, Narayan	124	55	0	179	660	
16.	Laxmi Dutt Vishwa Mitre, Nogli	165	16	23	204	880	
17.	Subhash Sharma, Jhakri	57	8	46	111	660	
18.	Tirath Ram, Khaneri	137	20	36	193	1200	
19.	Mela Ram, Taklech	156	42	0	198	880	
20.	Karam Chand Kamlesh Kumar, Gharatnala*	0	0	0	0	0	
21.	Ashok Kumar, Nanan	0	0	0	0	440	
22.	Satish Provision Store, Lower Totu	150	133	0	283	880	
23.	Vikram Thakur, Shoghi	41	17	0	58	440	
24.	Prem Lal Sharma, Vijaynagar, Totu	106	61	0	167	660	
25.	Sant Ram Sharma, Shivnagar, Totu	61	19	0	80	660	
26.	Anita Thapa, Vijaynagar, Totu	84	107	5	196	880	
27.	Hari Krishan Bhasin, Jutogh	34	85	0	119	300	
28.	Vinod Sood, Bharari	78	23	0	101	880	
29.	Sanjeev Sood, Bharari	68	52	12	132	880	
30.	Anita Kumari, Lakkar Bazar	62	49	0	111	740	
31.	Satish Kumar, Boileauganj *	0	0	0	0	0	
32.	Babita Sharma, Cheog	251	112	0	363	880	
33.	Sanjeev Sood, Ghora Chowki.	96	85	0	181	880	
34.	Thakur General Store,	40	60	0	100	700	

	Sangti						
35.	Durga Provision Store, Sangti *	0	0	0	0	0	
36.	Neelam Sharma Tara Devi	346	43	27	416	2800	
37.	Sanjay Thakur, Summerhill	331	197	0	528	2000	
38.	Vijay CMP Society, Dhar Jubbhal	61	101	0	162	660	
39.	Govind Singh, Rohru	385	122	0	507	2000	
40.	Meera Chauhan, Rohru	180	70	0	250	880	
41.	Kamal Machhan, Rohru	107	157	0	264	1000	
42.	Goverdhan Singh, Rohru	82	69	0	151	660	
43.	Jagdish Chand, Kutara	74	89	0	163	880	
44.	Prem Lal Chauhan, Rohru	0	0	0	0	660	
45.	Anil Kumar, Rohru	0	0	0	0	440	
46.	Prem Lal Tegta Rohru	81	94	0	175	660	
47.	Laturia Mull Roop Lal, Nangal Devi	201	305	0	506	900	
48.	Krishna Coal Co Shimla (against Permits)				700		
49.	CMP, Kansakoti	120	66	0	186	660	
50.	Rachpal Singh, Kansakoti	67	123	0	190	900	
51.	Satya Devi, Jhakri	67	24	9	100	440	
						44000	
Gainda Mull Hem Raj Shimla							
1.	Kailash Kaushal, Tutikandi	103	127	20	250	880	
2.	Lalit Kumar, New Shimla	124	193	0	317	880	
3.	Ram Pyari, Chotta Shimla	93	121	0	214	1500	
4.	Devinder Chauhan, Kaithu	204	178	0	382	2800	
5.	Krishna Coal Co., Panchayat Bhawan	288	92	0	380	2000	
6.	Raj Kumar Sood, Kaithu	465	0	0	465	2800	
7.	Sanjeev Thakur, Ruldubhatha	81	114	17	212	1500	
8.	Krishan Lal, Chakkar	164	201	0	365	1600	
9.	Parmod Sood, Victory Tunnel *	0	0	0	0	0	
10.	Pushpa Devi, Lakkar Bazar	104	112	44	260	2000	
11.	Subhash Chand, Ganj Bazar	296	214	71	581	4000	
12.	Vikas Jaswal, Phagli	113	24	0	137	1000	
13.	Pankaj Kumar, Myth, Kaithu *	0	0	0	0	0	
14.	Baldev Singh, Dudhli *	0	0	0	0	0	
15.	Ram Saran, Poabo	140	147	0	287	660	
16.	Yash Pal Kelti	91	130	1	222	660	
17.	Om Parkash, Kanena *	0	0	0	0	220	
18.	Pushpa Sharma, Dummi	76	23	21	120	660	
19.	Kalhanj CAS, Tara Devi	97	72	0	169	1500	
20.	Kalhanj CAS, Shoghi	148	24	8	180	1500	

21.	Surinder Thakur, Chamrog	66	71	4	141	880	
22.	Rajat Kohli, Tutikandi	305	289	0	594	2800	
23.	Kapil Sharma, New Shimla	126	103	0	229	660	
24.	HPSCSC, Chotta Shimla	180	211	0	391	880	
25.	HPSCSC, Kasumpti	0	0	0	0	880	
26.	Parmod Sethi, Kotkhahi	165	79	0	244	1500	
27.	HPSCSC, Baghi, Kotkhahi	101	193	0	294	660	
28.	The Ubha Desh Society, Kalbog	80	56	0	136	660	
29.	The Ubha Desh Society, Chamain	70	23	0	93	660	
30.	Krishan Lal, Chauri Bhaghal	40	160	0	200	660	
31.	CMP Society, Rawlakaiar	147	159	0	306	660	
32.	CMP, Ratnari	172	105	0	277	1000	
33.	Tehsil Union, Kotkhahi	0	0	0	0	1500	
34.	Gautam Sharma, Rohru	77	100	0	177	880	
35.	Chaman Lal, Dochi *	0	0	0	0	440	
36.	Satish Kumar, Anti *	0	0	0	0	440	
37.	HPSCSC, Kharapathar	161	363	0	524	1000	
38.	Jubbal CMP Society, Jubbal	215	349	0	564	1500	
39.	HPSCSC, Chirgaon	0	0	0	0	1500	
40.	Bir Chand, Rohru *	0	0	0	0	0	
41.	Prem Chand, Samala	80	56	0	136	880	
42.	Narender Kumar, Samolipul	70	23	0	93	660	
43.	Poonam Sharma, Rohru	40	160	0	200	660	
44.	Kooinal CMP Soc Ramnagar	0	0	0	0	480	
						48000	

Terms & Conditions:—

1.	Every Wholesaler and Fair Price Shop Holder/ Kerosene Oil Retailer under TPDS, authorised under the provision of (HP Specified Articles Regulation of Distribution) Order, 2003, will strictly adhere to the provisions of relevant Control Orders, issued by the Central & State Govt. under the Essential Commodities Act, 1955 (10 of 1955) and instruction.
2.	No delivery of Kerosene Oil (Blue Dyed) under TPDS will be made by the Wholesaler to the authorised retailer before the sun rise & after sun set. The authorised retailer shall also not issue the Kerosene Oil to the registered consumer card holder after closing time of the Fair Price Shop and on holiday declared by the concerned Fair Price Shop.
3.	The Wholesaler will add or deduct the increase or decrease in the procurement rate in the wholesale rate with the prior intimation to the office of District Controller, Food, Civil Supplies & Consumers Affairs, Shimla district Shimla, HP. Similarly, the retailer will also add or deduct any increase or decrease in the wholesale respectively. Every wholesaler, Fair Price Shop holder and authorised dealer will ensure submission of required returns well in time as already.
4.	Every consumer card holder or holder of any other authorised document issued by the competent authority will not carry more than the quantity of blue dyed kerosene oil for which he is entitled at one time and shall not store quantity more than one and half times to which he/she is entitled for at one time as per the Govt. Order.
5.	No SKO Wholesaler will deviate from this route chart notification without prior permission

	of the District Collector or District Controller FCS&CA Shimla.
6.	The routes allotted to wholesale dealers shall be changeable after every three months.

By order,
Sd/-
District Controller,
Food, Civil Supplies & Consumer Affairs,
Shimla, Distt. Shimla.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 16th May, 2014

No. Sharm (A) 7-1/2005 (Awards) L-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No.	Case No:	Title of the Case	Date of Award
1	277/2009	S/Shri Barahmi Devi V/s E.E.HPPWD,Dharampur.	1/3/2014
2	67/2011	Babbal Singh V/s -do-	3/3/2014
3	244/2013	Dehar Project Worker Union V/S M/s Saini Techna.	4/3/2014
4	141/2011	Saran Pat V/S Pradhan Gram Panchyat.	6/3/2014
5	151/2011	Beli Ram V/s -do-	6/3/2014
6	386/2012	Raj Kumar V/s E.E. I&PH Dehra.	6/3/2014
7	387/2012	Mohinder Singh V/s -do-	6/3/2014
8	44/2013	Madhav Ram V/s D.F.O. Suket.	11-03-2014
9	46/2013	Abhilashu V/s -do-	11-03-2014
10	192/2013	Govind Ram V/s E.E. HPPWD, J/Nagar.	14-03-2013
11	51/2014	Pradeep Kumar V/s -do-	14-03-2014
12	52/2014	Jai Dev V/s -do-	14-03-2014
13	53/2014	Balbair Singh V/s -do-	14-03-2014
14	54/2014	Nardu Devi V/s -do-	14-03-2014
15	55/2014	Sanichari Devi V/s -do-	14-03-2014
16	68/2014	Rumiya Ram V/s -do-	14-03-2014
17	145/2013	Suresh Kumar V/s -do-	14-03-2014
18	169/2013	Sanju Kumar V/s -do-	14-03-2014
19	170/2013	Raghubir Singh V/s -do-	14-03-2014
20	112/2014	Kalansha Devi V/S Director Ayurveda.	15-03-2014
21	114/2014	Asha Devi V/s -do-	15-03-2014
22	115/2014	Raj Kumar V/s D.F.O. Karsog	15-03-2014
23	56/2014	Hem Singh V/s E.E.HPPWD, J/Nagar.	18-03-2014
24	321/2012	Roshan Lal V/s D.F.O. Suket.	18-03-2014
25	198/2013	Mohender Pal V/s E.E. HPPWD, J/Nagar.	19-03-2014

26	71/2014	Sarwan Singh V/s E.O. Municipal Council Sh. Naina Devi Ji.	20-03-2014
27	207/2010	Pradhan/Sachiv, HPKVV V/s Registrar CSK, HPKVV.	20-03-2014
28	155/2013	HP Surksha Karamchari Union V/s Chairman/MD HPEX.Service Men.	21-03-2014
29	132/2011	Jamuna Devi V/s Headmaster, Govt. Primary School.	21-03-2014
30	18/2013	Mast Ram V/s D.F.O. Suket.	26-03-2014
31	38/2013	Yashwant Singh V/s D.F.O. Suket.	28-03-2014
32	29/2014	Asha Devi V/s E.E. HPPWD, J/Nagar.	5-3-2014

By order
(R.D.DHIMAN),
Pr.Secretary (Labour & Employment).

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 277/2009
Date of Institution : 07.03.2009
Date of Decision : 01.03.2014

Smt. Barahami Devi w/o Shri Tek Chand, r/o Village Ganteryalu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Barahami Devi W/O Shri Tek Chand by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, *w.e.f.* 08.07.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wagger on the muster rolls by the respondent on 07.01.1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by

the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). The persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service along-with her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of reemployment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 07.01.1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has

been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 07.01.2014, following issues were struck:-
 1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.07.2005 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the petition is not maintainable in the present form? ..OPR.
 3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
 4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged. If so, its effect? ..OPR.
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : Not pressed
 Issue No.4 : No
 Issue No.5 : Not pressed
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Smt. Barahmi Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service along-with her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated *w.e.f.* 08.7.2005. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wagger no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority *i.e.* Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/C is the copy of the termination notice given to Smt. Mamta Devi by the respondent.

13. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged *w.e.f.* 08.7.2005.

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wagger on the muster roll in the month of January, 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent *w.e.f.* 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

16. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of

Ex.PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

17. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C along-with the petitioner *w.e.f.* 08.7.2005. Smt. Mamta Devi was reengaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

18. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 3 and 5

20. Not pressed.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

23. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

24. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of March, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 67/2011

Date of Institution : 18.05.2011

Date of Decision : 03.03.2014

Shri Babbal Singh s/o Shri Thakar Dass, r/o Village Kharoon, P.O. Sidhpur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Babbal Singh S/O Sh. Thakar Dass, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated-04.7.2005, without following the provisions of the

Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar by the respondent on 01.11.1998. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of 'last come first go'. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and the retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14/2/2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set-aside.
- ii. The permission granted by the specified authority-cum-Chief Engineer, Central Zone Mandi under section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits

etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.11.1998 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, following issues were struck by my ld. Predecessor:--

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Dispute Act, 1947 is illegal and unjustified, as alleged. If so, to what effect?
..OPP.
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR.
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Babbal Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD Division, Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of the services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority *i.e.* Chief Engineer, Central Zone, Mandi. As per this order, he accorded the permission to retrench a number of workmen.

13. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

14. Ex. RW1/D is the copy of the notice dated 02.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated *w.e.f.* 08.7.2005.

15. Ex. RW1/E is the mandays chart relating to the petitioner.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.11.1998 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 02.7.2005, the copy of which is Ex. RW1/D, *w.e.f.* 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority list placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

23. This issue is also decided in favour of the petitioner and against the respondent.

24. Not pressed.

RELIEF (ISSUE NO.5)

25. As a sequel to my findings on the issues No.1 to 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of March, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 244/2013

The Dehar Project Workers Union, 2nd Stage Lahar, (Tikkri), Tehsil Bhattiyat, District Chamba, H.P.

..Petitioner.

Versus

The Employer/Managing Director, M/S Saini Techno Constructs (P) Ltd. #236, Bajri Co., Burmah, Shell Road, Pathankot- 14500, (Present Office) and Dehar, II Small hydro Electric Project (1.5MW) Village Tikri, Sub Tehsil Sihunta, District Chamba, H.P. (Site Office).

..Respondent.

04-03-2014 Present: Sh. Anil Dutt, President of the workers union (petitioner) with
Sh. Vishal Sharma, Adv.
Sh. Dinesh Kumar, G.M. for the respondent.

Statement of claim/demand not filed by the petitioner. Instead, Sh. Anil Dutt, the Pradhan of the workers union/petitioner has made the below given statement in the Court today:--

“मैं वादी / worker union का प्रधान हूँ । युनियन ने 28.02.2014 को एक resolution पास किया है, जिस द्वारा मुझे यह केस वापिस लेने के लिए अधिकृत किया गया है । मैं / हम यह केस न चलाना चाहते हैं । दाखिल दफ्तर किया जावे A Demand Notice 31-12-2012 हम वापिस लेते हैं । हम Union के Members अपने हितों की रक्षा व उन्हें मनवाने के लिए नया Demand notice प्रतिवादी को देंगे ।

RO & AC
P.J.”

Sd/-

04-03-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

(RAJAN GUPTA)
*Announced: Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 141/2011

Date of Institution : 28.11.2011

Date of Decision : 06.03.2014

Shri Saran Pat s/o Shri Ram Dhan, r/o Village Thalana, P.O. Bandhi, Sub Tehsil Aut, District Mandi, H.P. *..Petitioner.*

Versus

1. The Pardhan, Gram Panchyat, Bandhi, Sub Tehsil Aut, District Mandi, H.P.
2. The Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.B. Sharma, Adv.
For the Respondent No.1 : None-Already exparte
For the Respondent No.2 : Sh. Sanjeev Singh Rana, ADA.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Saran Pat S/O Shri Ram Dhan Water Guard by the (1) The Pardhan, Gram Panchyat Bandhi, Sub Tehsil Aut, District Mandi, H.P. and (2) The Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. who was appointed in consultation with and after approval of, as well as, wages were reimbursed by the Assistant Engineer, I.& P.H. Division, Mandi, District Mandi, H.P. w.e.f. 07-04-2008 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged water guard by the respondent No.1 w.e.f. 1st July, 2007. He worked as such up-to 07.4.2008 and completed 240 days of continuous service. On the said date i.e. 07.4.2008, his services were terminated by the respondent No.1 by a verbal order without assigning any reason. Before the disengagement of his service, neither any notice was given to him nor an inquiry was conducted against him. Even an opportunity of being heard was not afforded to him. During the period of employment, he (petitioner) discharged the duties to the best of his ability, honestly and to the satisfaction of the department. No complaint whatsoever was received against him. After the disengagement of his services one Shri Kamlesh Kumar s/o Shri Prem Singh has been appointed by the respondent No.1 in his (petitioner's) place mala fide. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). In the month of May, 2008, he approached the respondent No.1 (Pradhan) to re-engage his services, but in vain. From the date of his termination, he is unemployed.

As such, he (petitioner) prays that the termination order dated 07.4.2008 passed by the respondent No.1 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. The respondent No.1 subsequently absented from the Court because of which he was ordered to be heard ex parte.

4. The respondent No.2 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable against him (replying respondent) since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. He has misrepresented himself and has approached the Court by concealing the material facts. The industrial dispute has been raised by the petitioner/claimant at a belated stage in the year 2009. The petition is hit by the vice of delay and laches.

On merits, it has been denied that the petitioner worked under him (respondent No.2) at any point of time. Actually, the State of Himachal Pradesh had framed the scheme/guidelines for transfer of operation and maintenance of Rural Water Supply Schemes to the PRIs (Panchayati Raj Institutions). As per the guidelines, the WSS (Water Supply Scheme) was to be transferred to the concerned panchayat after the signing of the MOU (Memorandum of Understanding) between the IPH Department and the gram panchayat. The copy of the MOU dated 27.6.2007 concerning the petitioner is annexure R-2. After the signing of the MOU, the entire responsibility for operating and

maintenance of the water supply scheme below the storage tank shall be that of the gram panchayat. To carry out the above operations, the gram panchayat is/was at liberty to employ the workers for which the I&PH Department had only to provide financial assistance of Rs.750/- per month each worker as per the strength of workers provided by the gram panchayat. In accordance with the guidelines and the MOU, the petitioner was appointed as a worker by the respondent No.1, vide resolution No.4, dated 27.6.2007, on payment of the consolidated sum of Rs.750/- every month. At no stage of time, the petitioner was appointed by him (answering respondent). Even no payment of wages was ever made by him (respondent No.2) to the petitioner. The financial assistance under the guidelines was given to the concerned panchayat on submission of the bills by the respondent No.1 to him (respondent No.2) on the strength of the workers. The distribution of wages was done by the respondent No.1. Neither the petitioner was employed nor terminated by him (respondent No.2). The fact that after the disengagement of the services of the petitioner, Shri Kamlesh Kumar has been appointed by the respondent No.1 has been denied for want of knowledge. He (replying respondent) is continuing to impart financial assistance to the respondent No.1 on his part as per the strength of workers and the bills submitted by the respondent No.1. He (answering respondent) has no knowledge that the petitioner had approached the respondent No.1 for the re-engagement of his services. No provision of the Act has been flouted. The petition against him (contesting respondent No.2) is meritless.

In these circumstances, the respondent No.2 prays that the petition in hand be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent No. 2.

6. Per order dated 07.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 07.4.2008 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR2.
3. Whether the petitioner has a cause of action? ..OPP.
4. Whether the petitioner has not approached the Court with clean hands. If so, its effect? ..OPR2.
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR2.
6. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : The services of the petitioner were terminated by the respondent No.1 wrongly.

Issue No.2 : Not pressed

Issue No.3 : Partly Yes, Partly No

Issue No.4 : Not pressed

Issue No.5 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. The petitioner Shri Saran Pat stepped into the witness box as PW5. In his affidavit Ex. PW5/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that his services were engaged as a water guard by the Gram Panchayat, Bandhi (respondent No.1). He admitted that in the year 2007, the control of all the water supply schemes was handed over by the I&PH Department to the concerned panchayats because of which he was employed by the respondent No.1. Entire payment was made to him by the panchayat and not the I&PH Department. He does not know that on 10.4.2008, a resolution was passed by the gram panchayat to the effect that he is not discharging his duties properly because of which he should be removed from service. Shri Kamlesh was appointed in his place by the gram panchayat after the termination of his (PW5's) services. Shri Kamlesh is working as a water guard nowadays. He denied that the respondent No.1 terminated his services as he was not discharging his duties properly. He refuted that he has instituted a phoney petition.

10. Shri Narayan Dass PW1 is Supervisor, Section Panarsa No.1, I&PH Sub Division, Panarsa, District Mandi. He deposed that he knows the petitioner. In the year 2007, he (PW1) was working as a Supervisor in Bandhi Panchayat. The presence of the petitioner was verified by him. Daily attendance register Ex. PW1/A bears his signatures. In the cross-examination, he admitted that the services of the petitioner were engaged by the gram panchayat. The payment was also made to him (petitioner) by the respondent No.1.

11. Smt. Reshma Devi (PW2) testified that her services were engaged in the year 2007 in Kanda Kharli scheme of the I&PH Department. She is serving even now. She knows the petitioner. Now Shri Kamlesh is working in place of the petitioner. In the cross-examination, she admitted that the water scheme is maintained by the gram panchayat. Her services were engaged by the panchayat. She also admitted that she and the petitioner were employed by the gram panchayat vide resolution dated 27.6.2007.

12. Smt. Bhawna Sharma (PW3) is Labour Inspector, Mandi. She brought the requisitioned record and stated that the demand notice was issued by the petitioner. Conciliation proceedings were initiated. Ex. PW3/A is the copy of the demand notice served by the petitioner upon the respondents under Section 2-A of the Act.

In the cross-examination, she stated that during the conciliation proceedings, it was found that the services of the petitioner were engaged by the Pradhan, Gram Panchayat, Bandhi (respondent No.1).

13. PW4 is Shri Karam Singh, Secretary, Gram Panchayat, Bandhi. He too brought the record and proved Exts. PW4/A to J i.e. the vouchers of the payments made to the petitioner and other water guards employed by the gram panchayat.

14. Conversely, Shri Arun Sharma, Executive Engineer, I&PH Division, Mandi (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that he is not aware of the fact that the services of the petitioner were disengaged by the gram panchayat (respondent No.1) unlawfully.

15. Ex. R1 is the copy of the resolution dated 27.6.2007 passed by Gram Panchayat, Bandhi. It depicts that the services of the petitioner and others were engaged as water guards by the respondent No.1 for operation and maintenance of various water supply schemes. Ex. R2 corresponds to Ex. R1.

16. Ex. RW1/B is the copy of the guidelines for transfer of operation and maintenance of Rural Water Supply Schemes to the PRIs.

17. Ex. RW1/C is the copy of the memorandum of understanding (MOU) which was signed by the respondent No.1 and the Assistant Engineer, I&PH Sub Division, Panarsa.

18. Ex. RW1/D is the copy of the resolution dated 10.4.2008 passed by Gram Panchayat, Bandhi. It unfolds that the services of the petitioner were terminated as his work was not found satisfactory. After the disengagement of the services of the petitioner, Shri Kamlesh Kumar was appointed in his place by the gram panchayat.

19. It is the admitted case of the petitioner that his services were engaged and disengaged by the respondent No.1. No relationship of employer and employee/workman exists between the petitioner and the respondent No. 2.

20. Admittedly, no inquiry was conducted against the petitioner by the respondent No.1 (gram panchayat) before the termination of his services.

21. The petitioner (PW5) categorically pleaded and stated that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 07.4.2008. The said fact goes un-rebutted and unchallenged on the record.

22. Section 25-F of the Act postulates as under:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

23. There is nothing on the record to show that the provisions of the above quoted Section were complied with by the respondent No.1 before the disengagement of the services of the petitioner.

24. It is an admitted fact that after the termination of the services of the petitioner, Shri Kamlesh Kumar was appointed in his (petitioner's) place by the respondent No.1. There is nothing on the file to establish that before engaging new/fresh hands an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent No.1.

25. That being so, I have no hesitation to conclude that the respondent No.1 has flouted the provisions of Sections 25-F and 25-H of the Act. The termination of the services of the petitioner by the respondent No.1 is illegal and unjustified.

26. This issue is decided in favour of the petitioner and against the respondent No.1.

ISSUES NO. 2 AND 4

27. Not pressed.

ISSUE NO.3

28. Keeping in view my findings on issue No.1 above, it is held that the petitioner has a cause of action against the respondent No.1 only. The petition against the respondent No.2 does not lie.

29. This issue is decided accordingly.

ISSUE NO. 5

30. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

31. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:--

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said:

“Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

32. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

33. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

34. The termination in question took place on 07.4.2008. Demand notice dated 20.6.2008 under Section 2-A of the Act was served upon the respondents by the petitioner. Ex. PW3/A is the copy of the demand notice. The petitioner (PW5) also stated that in the month of May 2008, he had approached the respondent No.1 for re-employment, but of no avail. This amply demonstrates that the industrial dispute was raised by the workman/petitioner at the earliest opportunity and within a reasonable time. The termination of the services of the petitioner by the respondent No.1 has been held to be bad in the eyes of law in view of Sections 25-F and 25-H of the Act.

35. While testifying in the Court as PW1, the petitioner has given his age as 35 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

36. At the cost of reiteration, I will like to add that the retrenchment of the services of the petitioner by the respondent No.1 has been held to be violative of the provisions of Sections 25-F and 25-H of the Act. The petitioner served as a water guard from 01.7.2007 to 7th April, 2008 i.e. for almost nine months. After the termination of the services of the petitioner, Shri Kamlesh Kumar is looking after the water supply scheme which was being operated and managed by the petitioner. There is nothing on the file to establish that the respondent No.1 needs the manpower to operate and manage any of the water supply schemes under its control. I feel that in case the reinstatement of the services of the petitioner is ordered, the same will put unnecessary financial burden on the respondent No.2 without any fault on his part since as per the guidelines/MOU, the respondent No.2 is under a legal obligation to provide financial assistance to the respondent No.1 in accordance with the strength of workers engaged by the gram panchayat (respondent No.1). The same will also lead to making the payment to the petitioner without taking the work of a water guard from him. As mentioned earlier, the petitioner served as a water guard for almost nine months and that too about 6-7 years ago.

37. To my thinking, keeping in mind all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services. In my considered opinion, it will be just and expedient if the respondent No.1/employer is directed to pay a sum of Rs.20,000/- (Rupees twenty thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

38. This issue is also decided in favour of the petitioner and against the respondent No.1.

RELIEF (ISSUE NO.6)

39. As a sequel to my findings on the issues No.1, 3 and 5 above, the instant claim petition being meritless and not maintainable against the respondent No.2 fails. The same is dismissed against him. However, the claim petition succeeds in part and the same is partly allowed against the respondent No.1. The termination of the services of the petitioner by the respondent No.1 on 07.04.2008 is set aside and quashed. The respondent No.1 is directed to pay the compensation of Rs.20,000/- (twenty thousand only) to the petitioner in lieu of the reinstatement of his services as well as other consequential benefits, if any. Such amount will be paid by the respondent No.1 to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent No.1) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference *i.e.* 28.11.2011 till the date of payment/deposit. Parties to bear their own costs.

40. The reference is answered in the aforesaid terms.

41. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

42. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of March, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT- CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 151/2011

Date of Institution : 15.12.2011

Date of Decision : 06.03.2014

Shri Beli Ram s/o Shri Gholi Ram, r/o Village Nawahar, P.O. Bandhi, Sub Tehsil Aut, District Mandi, H.P. ..Petitioner.

Versus

3. The Pradhan, Gram Panchyat, Bandhi, Sub Tehsil Aut, District Mandi, H.P.

4. The Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.B. Sharma, Adv.

For the Respondent No.1 : None-Already exparte

For the Respondent No.2 : Sh. Sanjeev Singh Rana, ADA.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Beli Ram S/O Shri Gholi Ram, R/O Village Nawahar, P.O.Bandhi, Sub Tehsil Aut, District Mandi, H.P., Water Guard by the (1) The Pradhan, Gram Panchyat, Bandhi, Sub Tehsil Aut, District Mandi, H.P. (2) The Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. who was appointed in consultation with and after approval of, as well as wages were disbursed by the Assistant Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. w.e.f. 05-04-2008 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged water guard by the respondent No.1 w.e.f. 1st July, 2007. He worked as such up-to 05.4.2008 and completed 240 days of continuous service. On the said date i.e. 05.4.2008, his services were terminated by the respondent No.1 by a verbal order without assigning any reason. Before the disengagement of his service, neither any notice was given to him nor an inquiry was conducted against him. Even an opportunity of being heard was not afforded to him. During the period of employment, he (petitioner) discharged the duties to the best of his ability, honestly and to the satisfaction of the department. No complaint whatsoever was received against him. After the disengagement of his services one Shri Charanji Lal s/o Shri Tape Ram has been appointed by the respondent No.1 in his (petitioner's) place malafidely. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). In the month of May, 2008, he approached the respondent No.1 (Pradhan) to re-engage his services, but in vain. From the date of his termination, he is unemployed. As such, he (petitioner) prays that the termination order dated 05.4.2008 passed by the respondent No.1 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. The respondent No.1 subsequently absented from the Court because of which he was ordered to be heard *exparte*.

4. The respondent No.2 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable against him (replying respondent) since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. He has misrepresented himself and has approached the Court by concealing the material facts. The industrial dispute has been raised by the petitioner/claimant at a belated stage in the year 2009. The petition is hit by the vice of delay and laches.

On merits, it has been denied that the petitioner worked under him (respondent No.2) at any point of time. Actually, the State of Himachal Pradesh had framed the scheme/guidelines for transfer of operation and maintenance of Rural Water Supply Schemes to the PRIs (Panchayati Raj Institutions). As per the guidelines, the WSS (Water Supply Scheme) was to be transferred to the concerned panchayat after the signing of the MOU (Memorandum of Understanding) between the IPH Department and the gram panchayat. The copy of the MOU dated 27.6.2007 concerning the petitioner is annexure R-2. After the signing of the MOU, the entire responsibility for operating and maintenance of the water supply scheme below the storage tank shall be that of the gram

panchayat. To carry out the above operations, the gram panchayat is/was at liberty to employ the workers for which the I&PH Department had only to provide financial assistance of Rs.750/- per month each worker as per the strength of workers provided by the gram panchayat. In accordance with the guidelines and the MOU, the petitioner was appointed as a worker by the respondent No.1, vide resolution No.4, dated 26.6.2007, on payment of the consolidated sum of Rs.750/- every month. At no stage of time, the petitioner was appointed by him (answering respondent). Even no payment of wages was ever made by him (respondent No.2) to the petitioner. The financial assistance under the guidelines was given to the concerned panchayat on submission of the bills by the respondent No.1 to him (respondent No.2) on the strength of the workers. The distribution of wages was done by the respondent No.1. Neither the petitioner was employed nor terminated by him (respondent No.2). The fact that after the disengagement of the services of the petitioner, Shri Charanji Lal has been appointed by the respondent No.1 has been denied for want of knowledge. He (replying respondent) is continuing to impart financial assistance to the respondent No.1 on his part as per the strength of workers and the bills submitted by the respondent No.1. He (answering respondent) has no knowledge that the petitioner had approached the respondent No.1 for the re-engagement of his services. No provision of the Act has been flouted. The petition against him (contesting respondent No.2) is meritless.

In these circumstances, the respondent No.2 prays that the petition in hand be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent No.2.

6. Per order dated 07.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 05.4.2008 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR2.
3. Whether the petitioner has a cause of action? ..OPP.
4. Whether the petitioner has not approached the Court with clean hands. If so, its effect? ..OPR2.
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR2.
6. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : The services of the petitioner were terminated by the respondent No.1 wrongly.

Issue No.2 : Not pressed

Issue No.3 : Partly Yes, Partly No

Issue No.4 : Not pressed

Issue No.5 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

9. The petitioner Shri Beli Ram stepped into the witness box as PW5. In his affidavit Ex. PW5/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that his services were engaged as a water guard by the Gram Panchayat, Bandhi (respondent No.1). He admitted that in the year 2007, the control of all the water supply schemes was handed over by the I&PH Department to the concerned panchayats because of which he was employed by the respondent No.1. Entire payment was made to him by the panchayat and not the I&PH Department. He does not know that on 10.4.2008, a resolution was passed by the gram panchayat to the effect that he is not discharging his duties properly because of which he should be removed from service. Shri Charanji Lal was appointed in his place by the gram panchayat after the termination of his (PW5's) services. Shri Charanji Lal is working as a water guard nowadays. He denied that the respondent No.1 terminated his services as he was not discharging his duties properly. He refuted that he has instituted a phoney petition.

10. Shri Narayan Dass (PW1) is Supervisor, Section Panarsa No.1, I&PH Sub Division Panarsa, District Mandi. He deposed that he knows the petitioner. In the year 2007, he (PW1) was working as a Supervisor in Bandhi Panchayat. The presence of the petitioner was verified by him. Daily attendance register Ex. PW1/A bears his signatures.

In the cross-examination, he admitted that the services of the petitioner were engaged by the gram panchayat. The payment was also made to him (petitioner) by the respondent No.1.

11. Smt. Reshma Devi (PW2) testified that her services were engaged in the year 2007 in Kanda Kharli scheme of the I&PH Department. She is serving even now. She knows the petitioner. Now Shri Charanji Lal is working in place of the petitioner.

In the cross-examination, she admitted that the water scheme is maintained by the gram panchayat. Her services were engaged by the panchayat. She also admitted that she and the petitioner were employed by the gram panchayat vide resolution dated 27.6.2007.

12. Smt. Bhawna Sharma (PW3) is Labour Inspector, Mandi. She brought the requisitioned record and stated that the demand notice was issued by the petitioner. Conciliation proceedings were initiated. Ex. PW3/A is the copy of the demand notice served by the petitioner upon the respondents under Section 2-A of the Act.

In the cross-examination, she stated that during the conciliation proceedings, it was found that the services of the petitioner were engaged by the Pradhan, Gram Panchayat, Bandhi (respondent No.1).

13. PW4 is Shri Karam Singh, Secretary, Gram Panchayat, Bandhi. He too brought the record and proved Exts. PW4/A to I i.e. the voucher of the payments made to the petitioner and other water guards employed by the gram panchayat.

14. Conversely, Shri Arun Sharma, Executive Engineer, I&PH Division, Mandi (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that he is not aware of the fact that the services of the petitioner were disengaged by the gram panchayat (respondent No.1) unlawfully.

15. Ex. R1 is the copy of the resolution dated 27.6.2007 passed by Gram Panchayat, Bandhi. It depicts that the services of the petitioner and others were engaged as water guards by the respondent No.1 for operation and maintenance of various water supply schemes. Ex. R2 corresponds to Ex. R1.

16. Ex. RW1/B is the copy of the guidelines for transfer of operation and maintenance of Rural Water Supply Schemes to the PRIs.

17. Ex. RW1/C is the copy of the memorandum of understanding (MOU) which was signed by the respondent No.1 and the Assistant Engineer, I&PH Sub Division, Panarsa.

18. Ex. RW1/D is the copy of the resolution dated 10.4.2008 passed by Gram Panchayat, Bandhi. It unfolds that the services of the petitioner were terminated as his work was not found satisfactory. After the disengagement of the services of the petitioner, Shri Charanji Lal was appointed in his place by the gram panchayat.

19. It is the admitted case of the petitioner that his services were engaged and disengaged by the respondent No.1. No relationship of employer and employee/workman exists between the petitioner and the respondent No.2.

20. Admittedly, no inquiry was conducted against the petitioner by the respondent No.1 (gram panchayat) before the termination of his services.

21. The petitioner (PW5) categorically pleaded and stated that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 05.4.2008. The said fact goes un-rebutted and unchallenged on the record.

22. Section 25-F of the Act postulates as under:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

23. There is nothing on the record to show that the provisions of the above quoted Section were complied with by the respondent No.1 before the disengagement of the services of the petitioner.

24. It is an admitted fact that after the termination of the services of the petitioner, Shri Charanji Lal was appointed in his (petitioner's) place by the respondent No.1. There is nothing on the file to establish that before engaging new/fresh hands an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent No.1.

25. That being so, I have no hesitation to conclude that the respondent No.1 has flouted the provisions of Sections 25-F and 25-H of the Act. The termination of the services of the petitioner by the respondent No.1 is illegal and unjustified.

26. This issue is decided in favour of the petitioner and against the respondent No.1.

ISSUES NO. 2 AND 4

27. Not pressed.

ISSUE NO.3

28. Keeping in view my findings on issue No.1 above, it is held that the petitioner has a cause of action against the respondent No.1 only. The petition against the respondent No.2 does not lie.

29. This issue is decided accordingly.

ISSUE NO.5

30. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

31. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:--

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

32. In *Mohan Lal's* case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

33. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

34. The termination in question took place on 05.4.2008. Demand notice dated 20.8.2008 under Section 2-A of the Act was served upon the respondents by the petitioner. Ex. PW3/A is the copy of the demand notice. The petitioner (PW5) also stated that in the month of May 2008, he had approached the respondent No.1 for re-employment, but of no avail. This amply demonstrates that the industrial dispute was raised by the workman/petitioner at the earliest opportunity and within a reasonable time. The termination of the services of the petitioner by the respondent No.1 has been held to be bad in the eyes of law in view of Sections 25-F and 25-H of the Act.

35. While testifying in the Court as PW1, the petitioner has given his age as 30 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

36. At the cost of reiteration, I will like to add that the retrenchment of the services of the petitioner by the respondent No.1 has been held to be violative of the provisions of Sections 25-F and 25-H of the Act. The petitioner served as a water guard from 01.7.2007 to 04/5 April, 2008 i.e. for almost nine months. After the termination of the services of the petitioner, Shri Charanji Lal is looking after the water supply scheme which was being operated and managed by the petitioner. There is nothing on the file to establish that the respondent No.1 needs the manpower to operate and manage any of the water supply schemes under its control. I feel that in case the reinstatement of the services of the petitioner is ordered, the same will put unnecessary financial burden on the respondent No.2 without any fault on his part since as per the guidelines/MOU, the respondent No.2 is under a legal obligation to provide financial assistance to the respondent No.1 in accordance with the strength of workers engaged by the gram panchayat (respondent No.1). The same will also lead to making the payment to the petitioner without taking the work of a water guard from him. As mentioned earlier the petitioner served as a water guard for almost nine months and that too about 6-7 years ago.

37. To my thinking, keeping in mind all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services. In my considered opinion, it will be just and expedient if the respondent No.1/employer is directed to pay a sum of Rs.20,000/- (Rupees twenty thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

38. This issue is also decided in favour of the petitioner and against the respondent No.1.

RELIEF (ISSUE NO.6)

39. As a sequel to my findings on the issues No.1, 3 and 5 above, the instant claim petition being meritless and not maintainable against the respondent No.2 fails. The same is dismissed against him. However, the claim petition succeeds in part and the same is partly allowed against the respondent No.1. The termination of the services of the petitioner by the respondent No.1 on 05.04.2008 is set aside and quashed. The respondent No.1 is directed to pay the compensation of Rs.20,000/- (twenty thousand only) to the petitioner in lieu of the reinstatement of his services as well as other consequential benefits, if any. Such amount will be paid by the respondent No.1 to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent No.1) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 15.12.2011 till the date of payment/deposit. Parties to bear their own costs.

40. The reference is answered in the aforesaid terms.

41. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

42. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of March, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 151/2011

Date of Institution : 15.12.2011

Date of Decision : 06.03.2014

Shri Beli Ram s/o Shri Gholi Ram, r/o Village Nawahar, P.O. Bandhi, Sub Tehsil Aut, District Mandi, H.P. ..Petitioner.

Versus

5. The Pradhan, Gram Panchyat, Bandhi, Sub Tehsil Aut, District Mandi, H.P.

6. The Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.B. Sharma, Adv.

For the Respondent No.1 : None-Already exparte

For the Respondent No.2 : Sh. Sanjeev Singh Rana, ADA.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Beli Ram S/O Shri Gholi Ram, R/O Village Nawahar, P.O.Bandhi, Sub Tehsil Aut, District Mandi, H.P., Water Guard by the (1) The Pradhan, Gram Panchyat, Bandhi, Sub Tehsil Aut, District Mandi, H.P. (2) The Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. who was appointed in consultation with and after approval of, as well as wages were disbursed by the Assistant Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. w.e.f. 05-04-2008 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged water guard by the respondent No.1 w.e.f. 1st July, 2007. He worked as such up-to 05.4.2008 and completed 240 days of continuous service. On the said date i.e. 05.4.2008, his services were terminated by the respondent No.1 by a verbal order without assigning any reason. Before the disengagement of his service, neither any notice was given to him nor an inquiry was conducted against him. Even an opportunity of being heard was not afforded to him. During the period of employment, he (petitioner) discharged the duties to the best of his ability, honestly and to the satisfaction of the department. No complaint whatsoever was received against him. After the disengagement of his services one Shri Charanji Lal s/o Shri Tape Ram has been appointed by the respondent No.1 in his (petitioner's) place malafidely. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). In the month of May, 2008, he approached the respondent No.1 (Pradhan) to re-engage his services, but in vain. From the date of his termination, he is unemployed.

As such, he (petitioner) prays that the termination order dated 05.4.2008 passed by the respondent No.1 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. The respondent No.1 subsequently absented from the Court because of which he was ordered to be heard *ex parte*.

4. The respondent No.2 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable against him (replying respondent) since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. He has misrepresented himself and has approached the Court by concealing the material facts. The industrial dispute has been raised by the petitioner/claimant at a belated stage in the year 2009. The petition is hit by the vice of delay and laches.

On merits, it has been denied that the petitioner worked under him (respondent No.2) at any point of time. Actually, the State of Himachal Pradesh had framed the scheme/guidelines for transfer of operation and maintenance of Rural Water Supply Schemes to the PRIs (Panchayati Raj Institutions). As per the guidelines, the WSS (Water Supply Scheme) was to be transferred to the concerned panchayat after the signing of the MOU (Memorandum of Understanding) between the IPH Department and the gram panchayat. The copy of the MOU dated 27.6.2007 concerning the

petitioner is annexure R-2. After the signing of the MOU, the entire responsibility for operating and maintenance of the water supply scheme below the storage tank shall be that of the gram panchayat. To carry out the above operations, the gram panchayat is/was at liberty to employ the workers for which the I&PH Department had only to provide financial assistance of Rs.750/- per month each worker as per the strength of workers provided by the gram panchayat. In accordance with the guidelines and the MOU, the petitioner was appointed as a worker by the respondent No.1, vide resolution No.4, dated 26.6.2007, on payment of the consolidated sum of Rs.750/- every month. At no stage of time, the petitioner was appointed by him (answering respondent). Even no payment of wages was ever made by him (respondent No.2) to the petitioner. The financial assistance under the guidelines was given to the concerned panchayat on submission of the bills by the respondent No.1 to him (respondent No.2) on the strength of the workers. The distribution of wages was done by the respondent No.1. Neither the petitioner was employed nor terminated by him (respondent No.2). The fact that after the disengagement of the services of the petitioner, Shri Charanji Lal has been appointed by the respondent No.1 has been denied for want of knowledge. He (replying respondent) is continuing to impart financial assistance to the respondent No.1 on his part as per the strength of workers and the bills submitted by the respondent No.1. He (answering respondent) has no knowledge that the petitioner had approached the respondent No.1 for the re-engagement of his services. No provision of the Act has been flouted. The petition against him (contesting respondent No.2) is meritless. In these circumstances, the respondent No.2 prays that the petition in hand be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent No. 2.

6. Per order dated 07.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 05.4.2008 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR2.
3. Whether the petitioner has a cause of action? ..OPP.
4. Whether the petitioner has not approached the Court with clean hands. If so, its effect? ..OPR2.
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR2.
6. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : The services of the petitioner were terminated by the respondent No.1 wrongly.

Issue No.2 : Not pressed

Issue No.3 : Partly Yes, Partly No

Issue No.4 : Not pressed

Issue No.5 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. The petitioner Shri Beli Ram stepped into the witness box as PW5. In his affidavit Ex. PW5/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that his services were engaged as a water guard by the Gram Panchayat, Bandhi (respondent No.1). He admitted that in the year 2007, the control of all the water supply schemes was handed over by the I&PH Department to the concerned panchayats because of which he was employed by the respondent No.1. Entire payment was made to him by the panchayat and not the I&PH Department. He does not know that on 10.4.2008, a resolution was passed by the gram panchayat to the effect that he is not discharging his duties properly because of which he should be removed from service. Shri Charanji Lal was appointed in his place by the gram panchayat after the termination of his (PW5's) services. Shri Charanji Lal is working as a water guard nowadays. He denied that the respondent No.1 terminated his services as he was not discharging his duties properly. He refuted that he has instituted a phoney petition.

10. Shri Narayan Dass (PW1) is Supervisor, Section Panarsa No.1, I&PH Sub Division Panarsa, District Mandi. He deposed that he knows the petitioner. In the year 2007, he (PW1) was working as a Supervisor in Bandhi Panchayat. The presence of the petitioner was verified by him. Daily attendance register Ex. PW1/A bears his signatures.

In the cross-examination, he admitted that the services of the petitioner were engaged by the gram panchayat. The payment was also made to him (petitioner) by the respondent No.1.

11. Smt. Reshma Devi (PW2) testified that her services were engaged in the year 2007 in Kanda Kharli scheme of the I&PH Department. She is serving even now. She knows the petitioner. Now Shri Charanji Lal is working in place of the petitioner.

In the cross-examination, she admitted that the water scheme is maintained by the gram panchayat. Her services were engaged by the panchayat. She also admitted that she and the petitioner were employed by the gram panchayat vide resolution dated 27.6.2007.

12. Smt. Bhawna Sharma (PW3) is Labour Inspector, Mandi. She brought the requisitioned record and stated that the demand notice was issued by the petitioner. Conciliation proceedings were initiated. Ex. PW3/A is the copy of the demand notice served by the petitioner upon the respondents under Section 2-A of the Act.

In the cross-examination, she stated that during the conciliation proceedings, it was found that the services of the petitioner were engaged by the Pradhan, Gram Panchayat, Bandhi (respondent No.1).

13. PW4 is Shri Karam Singh, Secretary, Gram Panchayat, Bandhi. He too brought the record and proved Exts. PW4/A to I i.e. the voucher of the payments made to the petitioner and other water guards employed by the gram panchayat.

14. Conversely, Shri Arun Sharma, Executive Engineer, I&PH Division, Mandi (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that he is not aware of the fact that the services of the petitioner were disengaged by the gram panchayat (respondent No.1) unlawfully.

15. Ex. R1 is the copy of the resolution dated 27.6.2007 passed by Gram Panchayat, Bandhi. It depicts that the services of the petitioner and others were engaged as water guards by the respondent No.1 for operation and maintenance of various water supply schemes. Ex. R2 corresponds to Ex. R1.

16. Ex. RW1/B is the copy of the guidelines for transfer of operation and maintenance of Rural Water Supply Schemes to the PRIs.

17. Ex. RW1/C is the copy of the memorandum of understanding (MOU) which was signed by the respondent No.1 and the Assistant Engineer, I&PH Sub Division, Panarsa.

18. Ex. RW1/D is the copy of the resolution dated 10.4.2008 passed by Gram Panchayat, Bandhi. It unfolds that the services of the petitioner were terminated as his work was not found satisfactory. After the disengagement of the services of the petitioner, Shri Charanji Lal was appointed in his place by the gram panchayat.

19. It is the admitted case of the petitioner that his services were engaged and disengaged by the respondent No.1. No relationship of employer and employee/workman exists between the petitioner and the respondent No. 2.

20. Admittedly, no inquiry was conducted against the petitioner by the respondent No.1 (gram panchayat) before the termination of his services.

21. The petitioner (PW5) categorically pleaded and stated that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 05.4.2008. The said fact goes un-rebutted and unchallenged on the record.

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- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

23. There is nothing on the record to show that the provisions of the above quoted Section were complied with by the respondent No.1 before the disengagement of the services of the petitioner.

24. It is an admitted fact that after the termination of the services of the petitioner, Shri Charanji Lal was appointed in his (petitioner's) place by the respondent No.1. There is nothing on the file to establish that before engaging new/fresh hands an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent No.1.

25. That being so, I have no hesitation to conclude that the respondent No.1 has flouted the provisions of Sections 25-F and 25-H of the Act. The termination of the services of the petitioner by the respondent No.1 is illegal and unjustified.

26. This issue is decided in favour of the petitioner and against the respondent No.1.

ISSUES NO. 2 AND 4

27. Not pressed.

ISSUE NO.3

28. Keeping in view my findings on issue No.1 above, it is held that the petitioner has a cause of action against the respondent No.1 only. The petition against the respondent No.2 does not lie.

29. This issue is decided accordingly.

ISSUE NO.5

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“Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

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33. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

34. The termination in question took place on 05.4.2008. Demand notice dated 20.8.2008 under Section 2-A of the Act was served upon the respondents by the petitioner. Ex. PW3/A is the copy of the demand notice. The petitioner (PW5) also stated that in the month of May 2008, he had approached the respondent No.1 for re-employment, but of no avail. This amply demonstrates that the industrial dispute was raised by the workman/petitioner at the earliest opportunity and within a reasonable time. The termination of the services of the petitioner by the respondent No.1 has been held to be bad in the eyes of law in view of Sections 25-F and 25-H of the Act.

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37. To my thinking, keeping in mind all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services. In my considered opinion, it will be just and expedient if the respondent No.1/employer is directed to pay a sum of Rs.20,000/- (Rupees twenty thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

38. This issue is also decided in favour of the petitioner and against the respondent No.1.

RELIEF (ISSUE NO.6)

39. As a sequel to my findings on the issues No.1, 3 and 5 above, the instant claim petition being meritless and not maintainable against the respondent No.2 fails. The same is dismissed against him. However, the claim petition succeeds in part and the same is partly allowed against the respondent No.1. The termination of the services of the petitioner by the respondent No.1 on 05.04.2008 is set aside and quashed. The respondent No.1 is directed to pay the compensation of Rs.20,000/- (twenty thousand only) to the petitioner in lieu of the reinstatement of his services as well as other consequential benefits, if any. Such amount will be paid by the respondent No.1 to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent No.1) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 15.12.2011 till the date of payment/deposit. Parties to bear their own costs.

40. The reference is answered in the aforesaid terms.

41. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

42. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of March, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT- CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 386/2012

Date of Institution : 14.12.2012

Date of Decision : 06.03.2014

Shri Raj Kumar s/o Shri Diwan Chand, r/o Village Basha Bhatehad, P.O. Haripur, Tehsil Dehra, District Kangra, H.P. *..Petitioner.*

Versus

The Executive Engineer, IPH Division, Dehra, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Raj Kumar S/O Shri Diwan Chand, R/O Village Basha Bhatehad, P.O. Haripur, Tehsil Dehra, District Kangra, H.P. from time to time during year, 1996 to 31-12-2005 by the Executive Engineer, IPH Division, Dehra, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent in the year 1996. No appointment letter/order was issued in his name by the respondent/department. He worked under the Assistant Engineer, I&PH Sub Division, Haripur up-to December, 2005. From the date of his initial engagement to 31.12.2005, fictional breaks in service were provided to him by the respondent from time to time. Sometimes, muster roll for 15-20 days in a month instead of the whole month was issued in his name by the respondent/department. Artificial breaks in service were given by the respondent so that he (petitioner) does not complete 240 days of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). Smt. Chanchala Devi and Shri Raju Kumar were appointed by the respondent in the year 1994. From the dates of their initial appointment to the year 2001, fictional breaks in service were also provided to them by the respondent. After the year 2001, both the above named workmen were issued the muster rolls continuously and were not given the intentional breaks. The persons junior to him (petitioner) also worked in continuity with the respondent/department. At the time of providing the fictional breaks in service, the respondent adopted the pick and choose policy as well as failed to abide by the principle of ‘last come first go’. Per letter dated 27.3.2006 issued by the Principal Secretary (IPH) to the Government of Himachal Pradesh all the Executive Engineers in the State were directed to provide continuous work to the daily wagers without any break. The break period is required to be counted for the purpose of continuous service. He (petitioner) completed 8 years of continuous service on 31.12.2003 and 10 years of continuous service on 31.12.2005. As per the policy framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charge beldar w.e.f. 01.1.2006 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department on work charge/regular basis. The respondent indulged in unfair labour practice. His action is also violative of the provisions of Sections 25-F and 25-G of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:--

“i) The Hon’ble Court may kindly be set aside the fictional breaks period of applicant w.e.f. year, 1996 to 31.12.2005 and directed to respondent to condone the breaks period of applicant in continuity of service.

ii) The Hon’ble Court again directed to respondent to regularize the services of applicant after completion of 10 years services i.e. w.e.f. 01.01.2006 in regular pay scale and granted to applicant all consequential service benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner

has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The claim petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on muster roll basis w.e.f. 1st October, 1996. No intentional break in service was provided to the petitioner at any point of time as alleged. Continuous work for the whole years/months was made available. The petitioner used to absent from his duties. He was an intermittent worker and used to report for duty as per his convenience. Continuous work in the years 1998 to 2002 could not be provided to the petitioner due to the lack of budget and the work. At the time of issuing muster rolls in favour of the petitioner, he was duly made aware regarding the said fact. Smt. Chanchala Devi and Shri Raju Kumar are senior to the petitioner. The services of the petitioner have already been regularized. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner. He (respondent) did not indulge in any unfair labour practice. The policy framed/approved in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner have been rightly regularized as per the policy of the State contained in the letter dated 12.9.2012. Under the policy dated 12.9.2012, the cut off date for the consideration of seven years continuous service (with minimum 240 days in a calendar year) was taken into account from the year 2005. The regularization is/was subject to the availability of the post. Seven years of continuous service is/was only an eligibility criteria and the regularization shall be from the prospective effect i.e. after the date of the issuance of the order of regularization on completion of the codal formalities. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that he never absented from his duties.

5. Per order dated 20.6.2013, following issues were framed:

1. Whether the termination of the services/providing breaks in service to the petitioner by the respondent time and again from the year 1996 to 31.12.2005 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Raj Kumar (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to remain absent from his duties. He also denied that from the year 1996 to the year 2005 he did not raise any objection regarding the breaks. Further, he denied that his services have been rightly regularized as per the policy of the State and the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri P.C. Daroch, Executive Engineer, I&PH Division, Dehra (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that artificial breaks in service were provided to the petitioner time and again. He admitted that as per record no notice regarding willful absence from service was ever served upon the petitioner. He refuted that he has given a phoney statement.

10. RW2 is Shri Suresh Mahajan. He is presently posted as the Executive Engineer, I&PH Division, Dehra. He deposed that earlier to him Shri P.C. Daroch (RW1) was posted as the Executive Engineer. Shri Daroch has retired. Mandays chart Ex. RW1/A bears the signatures of Shri Daroch. After checking the record, it was noticed that the mandays chart (Ex. RW1/A) is incorrect. For the said reason, fresh mandays chart Ex. RW2/A has been prepared. The same is correct as per the record. Ex. RW2/A has also been signed by Shri P.C. Daroch.

In the cross-examination, he admitted that during the period of employment breaks in service were provided to the petitioner from time to time. Self stated many times the petitioner absented from his duties. He admitted that after the issuance of the letter/notification in the year 2006 by the Government, they stopped providing the intentional breaks in service to the petitioner. The daily wagers used to be employed earlier to the year 2006 subject to the availability of the work and the budget.

11. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to provide continuous service to daily waged workmen without any break as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis. The Executive Engineers were also directed to engage the labourers on full month basis.

12. Exts. RW1/A and RW2/A are the mandays charts relating to the petitioner.

13. Ex. RW1/B is the copy of an office order dated 22.9.2012 issued by the respondent regarding the regularization of the services of the petitioner.

14. Exts. RW1/C and D are the mandays charts pertaining to Smt. Chanchala Devi and Shri Raju Ram, respectively.

15. Exts. RW1/E and F are the office orders relating to Smt. Chanchala Devi and Shri Raju Kumar regarding the regularization of their services.

16. Ex. RW1/G is the copy of the letter dated 27th March, 2006. It corresponds to Ex. PW1/B.

17. Ex. RW1/H is the copy of the letter dated 12.9.2012 issued by the I&PH Department regarding regularization of daily waged workers who have completed seven years or more service as on 31.3.2012.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged labourer/beldar. The mandays chart Ex. RW2/A clarifies that the petitioner was initially employed by the respondent on 1st September, 1996. This mandays chart is not in dispute.

19. From the statement made by the petitioner (PW1) coupled with the mandays chart Ex. RW2/A, it can be gathered that the work for all the month in a year, full month(s) or 240 days in a calendar year was not provided to the petitioner by the respondent from the date of his initial engagement to the year 2005. Issuing the muster rolls after the gaps or the muster rolls not for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. Shri Suresh Mahajan (RW2) in his cross-examination admitted that breaks in service were provided to the petitioner from time to time and such breaks were stopped only after the issuance of the letter in the year 2006 (Ex. PW1/B) by the Government.

20. Seniority lists of daily waged workers have been placed on the record by the respondent. They clarify that Smt. Kamla Devi, Shri Parveen Kumar and Shri Malkiat Singh were appointed as beldars by the respondent in the year 2001. From the year 2002 onwards, they were provided the work for more than 240 days in a calendar year by the respondent. If the services of the petitioner used to be engaged for 10-20 days every month or for less than 240 days in a calendar year due to the non-availability of the budget and the work, then why the persons junior to him were provided the work for more than 240 days by the respondent. The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. As already mentioned, the action of the respondent in not issuing intentionally the muster roll for the entire month to the workman or for less than 240 days in a calendar year due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to the year 2005 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 AND 3

23. Not pressed.

ISSUE NO.4

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this

Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 58 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

26. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

27. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2005 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of March, 2014.

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 387/2012

Date of Institution : 14.12.2012

Date of Decision : 06.03.2014

Shri Mahinder Singh s/o Shri Durga, r/o Village and P.O. Haripur, Tehsil Dehra, District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, IPH Division, Dehra, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Mahinder Singh S/O Shri Durga, R/O Village and P.O. Haripur, Tehsil Dehra, District Kangra, H.P. from time to time during year, 1996 to 31-12-2005 by the Executive Engineer, IPH Division, Dehra, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent in the year 1996. No appointment letter/order was issued in his name by the respondent/department. He worked under the Assistant Engineer, I&PH Sub Division, Haripur up-to December, 2005. From the date of his initial engagement to 31.12.2005 fictional breaks in service were provided to him by the respondent from time to time. Sometimes, muster roll for 15-20 days in a month instead of the whole month was issued in his name by the respondent/department. Artificial breaks in service were given by the respondent so that he (petitioner) does not complete 240 days of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). Smt. Chanchala Devi and Shri Raju Kumar were appointed by the respondent in the year 1994. From the dates of their initial appointment to the year 2001, fictional breaks in service were also provided to them by the respondent. After the year 2001, both the above named workmen were issued the muster rolls continuously and were not given the intentional breaks. The persons junior to him (petitioner) also worked in continuity with the respondent/department. At the time of providing the fictional breaks in service, the respondent adopted the pick and choose policy as well as failed to abide by the principle of ‘last come first go’. Per letter dated 27.3.2006 issued by the Principal Secretary (IPH) to the Government of Himachal Pradesh all the Executive Engineers in the State were directed to provide continuous work to the daily wagers without any break. The break period is required to be counted for the purpose of continuous service. He (petitioner) completed 8 years of continuous service on 31.12.2003 and 10 years of continuous service on

31.12.2005. As per the policy framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charge beldar w.e.f. 01.1.2006 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department on work charge/regular basis. The respondent indulged in unfair labour practice. His action is also violative of the provisions of Sections 25-F and 25-G of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:--

“i) The Hon'ble Court may kindly be set aside the fictional breaks period of applicant w.e.f. year, 1996 to 31.12.2005 and directed to respondent to condone the breaks period of applicant in continuity of service.

ii) The Hon'ble Court again directed to respondent to regularize the services of applicant after completion of 10 years services i.e. w.e.f. 01.01.2006 in regular pay scale and granted to applicant all consequential service benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The claim petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on muster roll basis w.e.f. 1st January, 1996. No intentional break in service was provided to the petitioner at any point of time as alleged. Continuous work for the whole years/months was made available. The petitioner used to absent from his duties. He was an intermittent worker and used to report for duty as per his convenience. Continuous work in the years 1998 to 2002 could not be provided to the petitioner due to the lack of budget and the work. At the time of issuing muster rolls in favour of the petitioner, he was duly made aware regarding the said fact. Smt. Chanchala Devi and Shri Raju Kumar are senior to the petitioner. The services of the petitioner have already been regularized. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner. He (respondent) did not indulge in any unfair labour practice. The policy framed/approved in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner have been rightly regularized as per the policy of the State contained in the letter dated 12.9.2012. Under the policy dated 12.9.2012, the cut off date for the consideration of seven years continuous service (with minimum 240 days in a calendar year) was taken into account from the year 2005. The regularization is/was subject to the availability of the post. Seven years of continuous service is/was only an eligibility criteria and the regularization shall be from the prospective effect i.e. after the date of the issuance of the order of regularization on completion of the codal formalities. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that he never absented from his duties.

5. Per order dated 20.6.2013, following issues were framed:

1. Whether the termination of the services/providing breaks in service to the petitioner by the respondent time and again from the year 1996 to 31.12.2005 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Mahinder Singh (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to remain absent from his duties. He also denied that from the year 1996 to the year 2005, he did not raise any objection regarding the breaks. Further, he denied that his services have been rightly regularized as per the policy of the State and the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri P.C. Daroch, Executive Engineer, I&PH Division, Dehra (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that artificial breaks in service were provided to the petitioner time and again. He admitted that as per record, no notice regarding willful absence from service was ever served upon the petitioner. He refuted that he has given a phoney statement.

10. RW2 is Shri Suresh Mahajan. He is presently posted as the Executive Engineer, I&PH Division, Dehra. He deposed that earlier to him, Shri P.C. Daroch (RW1) was posted as the Executive Engineer. Shri Daroch has retired. Mandays chart Ex. RW1/A bears the signatures of Shri Daroch. After checking the record, it was noticed that the mandays chart (Ex. RW1/A) is

incorrect. For the said reason, fresh mandays chart Ex. RW2/A has been prepared. The same is correct as per the record. Ex. RW2/A has also been signed by Shri P.C. Daroch.

In the cross-examination, he admitted that during the period of employment breaks in service were provided to the petitioner from time to time. Self stated, many times the petitioner absented from his duties. He admitted that after the issuance of the letter/notification in the year 2006 by the Government, they stopped providing the intentional breaks in service to the petitioner. The daily wagers used to be employed earlier to the year 2006 subject to the availability of the work and the budget.

11. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to provide continuous service to daily waged workmen without any break as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis. The Executive Engineers were also directed to engage the labourers on full month basis.

12. Exts. RW1/A and RW2/A are the mandays charts relating to the petitioner.

13. Ex. RW1/B is the copy of an office order dated 22.9.2012 issued by the respondent regarding the regularization of the services of the petitioner.

14. Exts. RW1/C and D are the mandays charts pertaining to Smt. Chanchala Devi and Shri Raju Ram, respectively.

15. Exts. RW1/E and F are the office orders relating to Smt. Chanchala Devi and Shri Raju Kumar regarding the regularization of their services.

16. Ex. RW1/G is the copy of the letter dated 27th March, 2006. It corresponds to Ex. PW1/B.

17. Ex. RW1/H is the copy of the letter dated 12.9.2012 issued by the I&PH Department regarding regularization of daily waged workers who have completed seven years or more service as on 31.3.2012.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged labourer/beldar. The mandays chart Ex. RW2/A clarifies that the petitioner was initially employed by the respondent on 1st January, 1996. This mandays chart is not in dispute.

19. From the statement made by the petitioner (PW1) coupled with the mandays chart Ex. RW2/A, it can be gathered that the work for all the month in a year, full month(s) or 240 days in a calendar year was not provided to the petitioner by the respondent from the date of his initial engagement to the year 2005. Issuing the muster rolls after the gaps or the muster rolls not for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. Shri Suresh Mahajan (RW2) in his cross-examination admitted that breaks in service were provided to the petitioner from time to time and such breaks were stopped only after the issuance of the letter in the year 2006 (Ex. PW1/B) by the Government.

20. Seniority lists of daily waged workers have been placed on the record by the respondent. They clarify that Smt. Kamla Devi, Shri Parveen Kumar and Shri Malkiat Singh were appointed as beldars by the respondent in the year 2001. From the year 2002 onwards, they were provided the work for more than 240 days in a calendar year by the respondent. If the services of

the petitioner used to be engaged for 10-20 days every month or for less than 240 days in a calendar year due to the non-availability of the budget and the work, then why the persons junior to him were provided the work for more than 240 days by the respondent. The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. As already mentioned, the action of the respondent in not issuing intentionally the muster roll for the entire month to the workman or for less than 240 days in a calendar year due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to the year 2005 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 AND 3

23. Not pressed.

ISSUE NO. 4

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 55 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

26. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.5)

27. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2005 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of March, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 44/2013
Date of Institution : 25.4.2013
Date of Decision : 11.03.2014

Shri Madhav Ram s/o Shri Mallu Ram, r/o Village Samaul, P.O. Balag, Tehsil Sunder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Madhav Ram s/o Sh. Mallu Ram, Village-Samaul, P.O. Balag, Tehsil Sundar Nagar, Distt. Mandi, H.P. by The Divisional Forest Officer, Suket Forest Division, Sundar Nagar, Distt. Mandi, (H.P.) during July/August, 2010 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workmen, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers”.

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged labourer by the respondent on 1st March, 1996. He worked in Behali/Baddu Beat of Kangoo Forest Range. From the year 1998 to the year 2003, he worked for more than 240 days in a calendar year. Thereafter, the respondent/department started giving the artificial breaks in service to him time and again. Such breaks were given up-to the month of July, 2010. On 31.7.2010, his services were terminated by the respondent by a verbal order. Despite this fact the work was taken from him by the respondent up-to 14th August, 2010. After 15th August, 2010, his services were not engaged by the respondent and the muster roll for the month of August, 2010 was not issued in his favour by the respondent. Approximately 200 persons junior to him are still working with the respondent/department. Out of them, the services of 23 juniors have already been regularized. His seniority has been disturbed. The respondent indulged in unfair labour practice as well as failed to abide by the principle of ‘last come first go’. His (petitioner’s) name does not figure in the seniority list prepared by the respondent. The latter is proclaiming that the service record relating to him (petitioner) has been destroyed in the file. The mandays chart has not been correctly prepared by the respondent/department. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). On 15.9.2003, a written compromise had taken place between the employer (respondent) and the employees. As per the compromise the names of all the daily waged workers were to be mentioned in the seniority list. However, his name has not been entered in the seniority list in violation of the compromise dated 15.9.2003. He has been discriminated. From the date of his disengagement he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-G and 25-H of the Act.

As such, he (petitioner) prays that the fictional breaks in service given to him by the respondent from the year 1996 to 2010 as well as the final termination of his services ordered by the respondent in the month of July/August, 2010 be upset. The break period be counted for the purpose of continuous service. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition/reference is not maintainable in the present form. The petition is hit by the vice of delay and laches.

On merits, it has been denied that the services of the petitioner were engaged on 01.3.1996. However, it has been pleaded that as per the available record, the petitioner was appointed as a daily waged worker to carry out seasonal forestry works w.e.f. June, 2000 in Baddu Beat of Kangoo Range. The petitioner was an intermittent worker. He used to report for duty as per his convenience. No intentional break in service was provided to the petitioner at any point of time. His services were never disengaged as alleged. Actually, in the month of July, 2010, the petitioner abandoned the job voluntarily. The mandays chart (annexure R-1) shows that in many years the petitioner did not work even for a single day. Such chart has been correctly prepared. Since the

petitioner willfully left the job he is not entitled to any protection under the Act. No provision of the Act has been flouted. The principle of 'last come first go' was strictly adhered to. He (respondent) is strictly abiding by the conciliation memorandum dated 15.9.2003. The petitioner did not report for duty as per his sweet will. As and when he came present, his services were duly utilized. The petitioner is gainfully employed as an agriculturist. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 07.8.2013, following issues were framed:
 1. Whether the termination of the services of the petitioner by the respondent in the month of July/August, 2010 is illegal and unjustified as alleged? ..OPP.
 2. Whether the claim petition is not maintainable in the present form? ..OPR.
 3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Madhav Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that the work in the forest department is seasonal and he was employed for undertaking the seasonal works only. As and when he reported for duty, his services were duly utilized and he was paid the wages. He admitted that he is an agriculturist. He also admitted that he used to work as per his convenience. He denied that he left the job of his own and his services were never terminated by the respondent/department. He refuted that to derive undue advantages and gain the employment he has instituted a phoney petition.

9. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were engaged on 01.3.1996. He admitted that the petitioner worked up-to July, 2010. He also admitted that as per the seniority list, the persons junior to the petitioner are still working. The juniors have also been

regularized. The name of the petitioner is not there in the seniority list. When the petitioner left the service no notice was given to him asking him to resume the duty. Even no departmental proceedings were initiated against him (petitioner). He denied that the services of the petitioner were terminated unlawfully.

10. Ex. PW1/B is the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2003.

11. Ex. RW1/B is the mandays chart pertaining to the petitioner.

12. Ex. PA is the copy of the report dated 09.3.2012 sent by the Conciliation Officer-cum-Labour Inspector, Sunder Nagar (H.P.) to the appropriate Government under Section 12 (4) of the Act.

13. No reference has been received from the appropriate Govt. regarding providing the artificial/fictional breaks in service to the petitioner by the respondent as alleged. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per the mandate of Section 10(4) of the Act.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged labourer. The petitioner has not placed/exhibited on the record any document evidencing that he was initially employed on 1st March, 1996 as claimed. Rather, the mandays chart Ex. RW1/B unfolds that the services of the petitioner were engaged by the respondent for the first time in the month of June, 2000. There is no cogent and convincing evidence on the record to show that the mandays chart Ex. RW1/B produced by the respondent is wrong.

15. The version of the petitioner is that on 31st July, 2010, his services were terminated by the respondent by an oral order and the muster roll for the month of August, 2010 was not issued in his favour by the respondent/department.

While denying the said fact, the respondent has pleaded that the petitioner was an intermittent worker. He used to report for duty as per his convenience and sweet will. In the month of July, 2010, the petitioner abandoned the job of his own accord and free volition. His services were never terminated as alleged.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/B reveals that the petitioner lastly worked in the month of July, 2010. In July, 2010, he served the respondent/department for 24 days. The petitioner did not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination i.e. July/August, 2010 as per Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

18. The respondent (RW1) in his cross-examination admitted that the name of the petitioner does not figure in the seniority list Ex. PW1/B and the persons junior to the petitioner are working under him (respondent). RW1 also admitted that the services of some of the juniors have

been regularized. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. For this reason the disengagement of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a person need not complete 240 days of work in a block of 12 calendar months prior to the date/month of his termination.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

20. Not pressed.

ISSUE NO.3

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:--

"19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said:

"Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before

exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

23. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

24. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

The date/month of impugned termination is July/August, 2010. Such termination has been held to be bad in the eyes of law in view of the provisions contained in Section 25-G of the Act.

25. The mandays chart Ex. RW1/B discloses that the petitioner served the respondent/department intermittently from June, 2000 to July, 2010. In almost 11 years of service, the petitioner worked for total 140 days from time to time. In the year 2001 and from the year 2003 to 2008, the petitioner did not serve the respondent even for a single day. In none of the calendar years the petitioner served the respondent/department for 240 days or more. The petitioner (PW1) in his cross-examination admitted that he was employed by the respondent for carrying out the seasonal works and he used to report for duty as per his convenience.

26. The petitioner has not produced/exhibited the demand notice served upon the respondent by him. From Ex. PA i.e. copy of the report under Section 12(4) of the Act forwarded by the Conciliation Officer-cum-Labour Inspector, Sunder Nagar to the appropriate Govt., it can be gathered that the industrial dispute was raised by the petitioner vide demand notice dated 14.6.2011 i.e. almost after 11 months from the termination in question. To my thinking, keeping in view all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the admissions made by the petitioner (PW1) and the trite laid down in Mohan Lal’s case (cited supra), the petitioner is not entitled to the reinstatement of his services particularly when he worked only for 140 days in almost 11 years. In many years, he did not work for a single day. In none of the calendar year, he completed 240 days or more of work. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. Otherwise too, the petitioner (PW1) admitted that he earns his livelihood by doing the work of agriculture.

27. Taking into consideration the above noted facts, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.5,000/- (Five thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

28. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

29. As a sequel to my findings on the issues No. 1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the services of the petitioner

by the respondent in July/August, 2010 is set aside and quashed. The respondent is directed to pay the compensation of Rs.5,000/- (five thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 25.4.2013 till the date of payment/deposit. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of March, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 46/2013

Date of Institution : 25.4.2013

Date of Decision : 11.03.2014

Shri Abhilashu s/o Shri Sidhu, r/o Village Rohal, P.O. Batwara, Tehsil Sunder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Sh. Abhilashu s/o Sh. Sidhu, Village Rohal, P.O. Batwara, Tehsil Sunder Nagar, Distt. Mandi, H.P. by The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P. from year, 2008 onwards and finally during 2011 without complying with the provisions of the Industrial Disputes

Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers”.

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged labourer by the respondent on 1st July, 1998. He worked as such up-to 30.4.2011 in Kangoo Forest Range. On 1st May, 2011 his services were terminated by the Range Forest Officer, Kangoo by a verbal order without assigning any reason. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. After 01.5.2011, the respondent employed him for 20 days in the month of July and 16 days in the month of August, 2011. Thereafter, his services were not engaged by the respondent and he is unemployed. A fresh demand notice dated 12.4.2013 in this regard has been served upon the respondent by him. During the period of employment, the respondent gave him the fictional breaks in service time and again. The persons junior to him were provided continuous work by the respondent. His (petitioner's) seniority and continuity in service were ignored/disturbed by the respondent which amounts to unfair labour practice. In the seniority list issued on 31.3.2003 by the respondent, the names of 386 daily waged workers have been entered. His name figures at serial No.177 of the list. 209 persons junior to him (petitioner) are still serving the respondent/department. The break period is required to be counted for the purposes of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The respondent failed to abide by the principle of 'last come first go'. His action also contravenes the provisions of Section 25-G and 25-H of the Act. For this reason, the final termination of his services by the respondent on 01.5.2011 is illegal and unjustified.

As such, he (petitioner) prays that the final termination order date 01.5.2011 passed by the respondent as well as the artificial breaks in service given to him by the respondent/employer from time to time be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The petition is hit by the vice of delay and laches. The reference regarding the retrenchment of the services of the petitioner during the year 2011 and the claim petition are premature. The same have also become in-fructuous as the petitioner is still on his (respondent's) rolls.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged labourer in the month of July, 1998. However, it has been pleaded that the petitioner was appointed for undertaking the seasonal works only. He worked up-to the year 2012. Neither the services of the petitioner were finally terminated nor artificial breaks in service (as alleged) were provided to him at any point of time. The petitioner was an intermittent worker. He used to report for duty as per his convenience and abandon the job time and again. As and when the petitioner reported for duty, his services were utilized. Break in service was not provided to the petitioner with intent not to permit him to complete 240 days of work as alleged. It stands admitted that the name of the petitioner figures at serial No.177 of the seniority list dated 31.3.2003. The principle of 'last come first go' was strictly followed. No provision of the Act has been flouted. The petitioner is gainfully employed. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 07.8.2013, following issues were framed:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent from the year 2008 to 2011 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the final termination of the services of the petitioner by the respondent in the year 2011 is illegal and unjustified as alleged? ..OPP.
 3. Whether the claim petition is not maintainable in the present form? ..OPR.
 4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 5. Whether the claim petition is premature and has become in-fructuous as alleged. If so, its effect? ..OPR.
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Issue No.5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Abhilashu (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that as and when he worked under the respondent, his presence was marked. He was also marked present in the year 2012. The payment for the working days put in by him was made to him by the respondent/department. Self stated, the payment for 35 days has not been made. He admitted that as and when he reported for duty, the respondent provided him the work and paid him the wages. He denied that he used to work as per his convenience and sweet will. He also denied that his services were not finally terminated by the respondent in the year 2011 and no artificial break in service was provided to him by the employer. He refuted that he willingly left the job and has instituted a phoney petition to derive undue benefits.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were provided to the petitioner from time to time. He admitted that the persons junior to the petitioner are still serving

under him and their services have been regularized. He denied that the petitioner did not serve for 92 days in the year 2012.

11. Exts. PW1/B and RW1/B are the mandays charts relating to the petitioner.

12. Ex. PW1/C is the copy of the demand notice dated 12.4.2013 served upon the respondent by the petitioner.

13. Ex. PW1/D is the copy of the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2003. It corresponds to Ex. RW1/C.

14. Ex. PA is the copy of the report under Section 12(4) of the Act sent by the Conciliation Officer-cum-Labour Inspector, Sunder Nagar (HP) to the appropriate Govt.

15. Ex. PB is the copy of the reply filed by the respondent before the Conciliation Officer, Mandi during the conciliation proceedings.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager by the respondent on 1st July, 1998. The said fact find support from the mandays charts Exts. PW1/B and RW1/B. The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner were engaged for undertaking the seasonal forestry works only. Otherwise too, the mandays charts unfold that in the years 2000, 2001, 2002 and 2003, the petitioner served the respondent/department for 327, 265, 240 and 281 days, respectively. A person working for more than 240 or 300 days in a calendar year cannot be termed as a seasonal worker by any stretch of imagination.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that after the petitioner left the service, a notice was served upon him by the respondent calling upon him to resume his duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. No explanation of the petitioner was called or the show cause notice was issued to him by the respondent regarding the absence from duties time and again as alleged. The plea of abandonment or absence from duties put forth by the respondent is not established.

18. The mandays charts Ex. PW1/B and RW1/B unfold that from the year 2008 to 30th April, 2011, work for 240 days or more in a calendar year was not provided to the petitioner by the respondent. As already mentioned, the petitioner is/was not a seasonal worker. Month-wise and year-wise mandays chart of the petitioner has also been produced by the respondent. It reveals that either the muster rolls for all the months in a year or for the full month were not issued in the name of the petitioner by the respondent. Issuance of the muster rolls after the gaps or not for the entire month in favour of a workman due to no fault of the workman is nothing but unfair labour practice. In view of these facts, it can be said that artificial/fictional breaks in service were provided to the petitioner by the respondent from March/April, 2008 to 30th April, 2011. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act.

19. Now comes the question as to whether the services of the petitioner were finally terminated by the respondent on 01.5.2011 or not?

The respondent has maintained that even after 01.5.2011, the petitioner worked under him in the years 2011 and 2012 because of which it cannot be said that the services of the petitioner were finally retrenched on 01.5.2011 as claimed.

20. As mentioned earlier, the plea of abandonment canvassed by the respondent has not been established. Year-wise/month-wise working days chart of the petitioner reveals that he had worked for only 17 days in the month of April, 2011. In May and June, 2011, he did not work for a single day. As no work was provided to the petitioner by the respondent/employer in the month of May, 2011, it can be easily said that his services were finally retrenched by the respondent on 01.5.2011.

21. Ex. PW1/D is the seniority list of daily wagers of Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003. It corresponds to Ex. RW1/C. The name of the petitioner figures at serial No.177 of this list. The respondent (RW1) in his cross-examination admitted that the persons junior to the petitioner are still working under him and the services of the juniors have also been regularized. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. For this reason, the final termination of the services of the petitioner by the respondent on 01.5.2011 is illegal and unjustified. It appears to me that the services of the petitioner were reengaged by the respondent in the month of July, 2011 with a view to circumvent the industrial dispute raised by him (petitioner) per demand notice dated 14.6.2011. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

22. These issues are decided in favour of the petitioner and against the respondent.

ISSUES NO.3 AND 5

23. Not pressed.

ISSUE NO.4

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:--

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said:

“Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

26. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

27. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

28. The termination in question took place on 01.5.2011. The same has been held to be bad in the eyes of law in view of Section 25-G of the Act.

29. The petitioner is serving the respondent from the month of July, 1998. In the years 2000 to 2003, he worked for 240 or more days under the respondent. From Ex. PA i.e. the copy of the report under Section 12(4) of the Act forwarded by the Conciliation Officer-cum-Labour Inspector, Sunder Nagar to the appropriate Govt., it can be gathered that regarding the final termination dated 01.5.2011, demand notice was served upon the respondent by the petitioner on 14.6.2011. This indicates that the industrial dispute was raised by the petitioner without any delay and within a period of two months from the impugned termination. Since the petitioner is serving the respondent right from the month of July, 1998 and even worked for more than 240 days in several years, he is entitled to the reinstatement of his services.

30. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is common knowledge that a person like the petitioner will not sit at home during the period, he is/was out of the service or even during the break period. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

31. This issue is also decided in favour of the petitioner and against the respondent. RELIEF (ISSUE NO.6).

32. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks in service given to the petitioner by the respondent from the month of March, 2008 to 30.4.2011 as well as final termination of the services of the

petitioner by the respondent are held to be wrong and illegal. The break period is ordered to be counted for the purpose of continuous service. The petitioner shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.5.2011 except back wages. Parties to bear their own costs.

33. The reference is answered in the aforesaid terms.

34. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

35. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of March, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. Ref: No. : 192/2013

Shri Govind Ram s/o Shri Sant Ram, r/o Village Tobri, P.O. Dohag, Tehsil Joginder Nagar,
Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

14-03-2014 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Sh. R.P. Rana, Labour Officer-cum-Conciliation Officer, Mandi Zone, Mandi, Distt. Mandi is present in the Court today pursuant to the show cause notice issued to him.

2. Sh. R.P. Rana has made the below given statement in the Court :--

“ A registered letter was sent to the workman Sh. Govind Ram to appear in this Court which was received by him. As per the information received by me, the workman/petitioner is not interested to pursue the matter. It be decided.

RO & AC

P.J.”

Sd/-

14-03-2014

3. The above noted statement amply demonstrates that the claimant/petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.
5. The show cause notice to Shri R.P. Rana is discharged.
6. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
7. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 51/2014

Sh. Pradeep Kumar s/o Shri Roop Lal, r/o Village Prain, P.O. Langana, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

14-03-2014 Present : Petitioner with Sh. Vijay Kaundal, Adv.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that since the industrial dispute raised in this reference/notification has already been decided by this Court per Award dated 02-11-2010 passed in reference No. 110/2006, he does not want to proceed with this reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 52/2014

Sh. Jai Dev s/o Shri Lohku Ram, r/o Village & P.O. Khadidhar, Tehsil Joginder Nagar,
Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
..Respondent.

14-03-2014 Present : Petitioner with Sh. Vijay Kaundal, Adv.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that since the industrial dispute raised in this reference/notification has already been decided by this Court per Award dated 02-11-2010 passed in reference No. 110/2006, he does not want to proceed with this reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 53/2014

Sh. Balbir Singh s/o Shri Dhani Ram, r/o Village Matkehru, P.O. Drubal, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
..Respondent.

14-03-2014 Present: Sh. Suresh Kumar Sharma, Adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the claimant/petitioner has made the below given statement in the Court today:--

“ In view of the pendency of Reference No. 19/2014 between the same parties relating to the similar dispute, I do not want to proceed with this reference. It be dismissed as withdrawn.

RO & AC

P.J.”

Sd/-

14-03-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 54/2014

Smt. Nardu Devi w/o Shri Puran Chand, r/o Village & P.O. Khadihar Thara, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

14-03-2014 Present : Petitioner with Sh. Vijay Kaundal, Adv.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that since the industrial dispute raised in this reference/notification has already been decided by this Court per Award dated 02-11-2010 passed in reference No. 110/2006, he does not want to proceed with this reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 55/2014

Smt. Sanichari Devi w/o Shri Lachhman Singh, r/o Village Dhurali, P.O. Langna, Tehsil
Joginder Nagar, Distt. Mandi, H.P..
..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
...Respondent.

14-03-2014 Present : Sh. Vijay Kaundal, Adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that since the industrial dispute raised in this reference/notification has already been decided by this Court per Award dated 02-11-2010 passed in reference No. 110/2006, he does not want to proceed with this reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 68/2014

Sh. Rumiya Ram s/o Shri Bhikham Ram, r/o Village & P.O. Khadihar, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *...Respondent.*

14-03-2014 Present : Petitioner with Sh. Vijay Kaundal, Adv.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that since the industrial dispute raised in this reference/notification has already been decided by this Court per Award dated 02-11-2010 passed in reference No. 110/2006, he does not want to proceed with this reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 145/2013

Sh. Suresh Kumar s/o Shri Jaswant Singh, r/o Village Aharu, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

14-03-2014 Present: Sh. Vijay Kaundal, Adv. csl. for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Once again the authorisation memo not filed.

2. Ld. csl. for the claimant/petitioner has made the below given statement in the Court today:--

“ No PW is present today. I had sent registered letters to the petitioner to come to the Court and appear as a witness. The first registered letter was received by the petitioner. The second registered letter dated 07-03-2014 sent to the petitioner has been received by me undelivered since its receipt was refused by the petitioner. For these reasons, I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn.

RO & AC

P.J.”

Sd/-

14-03-2014

3. Ordered accordingly. Parties to bear their own costs.
4. The reference is answered in the aforesaid terms.
5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
6. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. :169/2013

Sh. Sanju Kumar s/o Shri Jonda Ram, r/o Village Dehlu, P.O. Dohag, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

14-03-2014 Present : Sh. Vijay Kaundal, Adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Once again the authorisation memo not filed.

2. No PW is present despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that since his client has not contacted him despite intimation and

has not come present, he does not want to proceed with this reference/claim petition. It /they be dismissed as withdrawn.

3. Ordered accordingly. Parties to bear their own costs.
4. The reference is answered in the aforesaid terms.
5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
6. File after due completion be consigned to the Record Room.

(RAJAN GUPTA)
*Announced: Presiding Judge,
 Labour Court-cum-
 Industrial Tribunal,
 Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
 INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. :170/2013

Sh. Raghubir Singh s/o Shri Kanhiya Ram , r/o Village Sagnehar, P.O. Chauntra, Tehsil
 Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
..Respondent.

14-03-2014 Present: Sh. Vijay Kaundal, Adv. csl. for the petitioner.
 Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Once again the authorisation memo not filed.

2. No PW is present despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that since his client has not contacted him despite intimation and has not come present, he does not want to proceed with this reference/claim petition. It /they be dismissed as withdrawn.

3. Ordered accordingly. Parties to bear their own costs.
4. The reference is answered in the aforesaid terms.
5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
6. File after due completion be consigned to the Record Room.

Announced:

(Rajan Gupta)
*Presiding Judge,
 Labour Court-cum-
 Industrial Tribunal,
 Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 112/2014

Smt. Kalansha Devi w/o Shri Rattan Chand, r/o Village Khalenoo, P.O.Bandian, Tehsil Baijnath,
District Kangra, H.P. ..Petitioner.

Versus

1. The Director Ayurveda, Government of Himachal Pradesh, Shimla-9.
2. The Principal, Rajiv Gandhi Government P.G. Ayurvedic College, Paprola, District
Kangra, H.P. ..Respondents.

15-03-2014 Present: Petitioner in person.

Dr. Daljit Singh, District Ayurvedic Officer, Kangra at Dharamshala
for the respondent No.1.

Sh. Swaroop Singh Rana, Dy. Medical Superintendent for the
respondent No.2.

The petitioner/workman has made the below given statement in the Court today:--

“मुझे प्रतिवादीगण ने तमहानसंत कर दिया है जिस कारण
मैं यह केस न चलाना चाहती हूँ । दाखिल दफ्तर किया जावे ।

RO & AC

P.J.”

Sd/-

15-03-2014.

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further
necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 114/2014

Smt. Asha Devi w/o Shri Moli Ram, r/o Village and P.O. Ustehad, Tehsil Baijnath, District Kangra, H.P. ..Petitioner.

Versus

1. The Director Ayurveda, Government of Himachal Pradesh, Shimla-9.
2. The Principal, Rajiv Gandhi Government P.G. Ayurvedic College, Paprola, District Kangra, H.P. ..Respondents.

15-03-2014 Present : Petitioner in person.

Dr. Daljit Singh, District Ayurvedic Officer, Kangra at Dharamshala for the respondent No.1.

Sh. Swaroop Singh Rana, Dy. Medical Superintendent for the respondent No.2.

The petitioner/workman has made the below given statement in the Court today:--

“मुझे प्रतिवादीगण ने तमहन्संत कर दिया है जिस कारण मैं यह केस न चलाना चाहती हूँ । दाखिल दफ्तर किया जावे ।

RO & AC

P.J.”

Sd/-

15-03-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 115/2014

Sh. Raj Kumar s/o Shri Devi Ram, r/o Village and P.O. Bhaneri, Tehsil Karsog, District
Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Karsog Forest Division, Karsog, District Mandi, H.P.
..Respondent.

15-03-2014 Present: Petitioner in person.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The petitioner/workman has made the below given statement in the Court today:--

“मैं यह मुकदमा न चलाना चाहता हूँ। दाखिल दफ्तर किया
जावे। मुझे प्रतिवादी लगातार काम पर रख रहा है।

RO & AC

P.J.”

Sd/-

15-03-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 56/2014

Shri Hem Singh s/o Shri Bhopat Ram, r/o Village Kudnu, P.O. Drahal, Tehsil Joginder
Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

18-03-2014 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He (petitioner) was personally present on the last date of hearing but, is absent today despite knowledge. It is already 2.30 p.m. This indicates that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. No break in service (as per the reference) was provided to the petitioner by the respondent. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 321/2012

Date of Institution : 03.9.2012

Date of Decision : 18.03.2014

Shri Roshan Lal s/o Shri Chamaroo Ram, r/o Village Dhogi, P.O. Balag, Sub Tehsil Nihri,
District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Roshan Lal S/O Shri Chamaroo Ram, R/O Village Dhogi, P.O. Balag, Sub Tehsil Nihri, District Mandi, H.P. from time to time during year, 1998 to August, 2009 and finally terminated *w.e.f.* 01-09-2009 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified. If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the year 1998. He worked in Jhungi Range up-to the year 2009 as well as completed 240 days of work in each and every calendar year of his employment. After the year 2009, the respondent started providing artificial breaks in service to him. His legal right to be engaged on regular basis was ignored. Finally, on 31.8.2009, his services were terminated by the respondent. Before the disengagement of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of his termination, the persons junior to him namely S/Shri Babu Ram and Pyare Lal etc. were retained in service by the respondent. The juniors have also been regularized. After August, 2009, new/fresh hands were engaged by the respondent. He was not given an opportunity of reemployment. Sufficient work and funds are available with the respondent/department to reinstate him in service. He has been arbitrarily thrown on the road. After 31.8.2009, he visited the office of the respondent and the office of the concerned Range Officer to reemploy him, but in vain. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“(A) The petitioner be reinstated *w.e.f.* 01.09.2009 with back wages;

(B) The petitioner be granted the regular post from the date persons junior to him were engaged on regular basis and be granted seniority accordingly besides consequential service benefits and justice done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the reference and the claim petition are not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The claim petition and the reference with regard to the retrenchment dated 01.9.2009 are premature. The same have also become in-fructuous as the petitioner is still on his (respondent’s) rolls. The services of the petitioner were never disengaged as alleged.

On merits, it has been owned that the services of the petitioner were engaged in the month of July, 1998. However, it has been pleaded that the petitioner was appointed as a casual labourer to carry out the seasonal forestry works. In the year 1998, he worked for 20 days only and, thereafter, never reported for duty. The petitioner came present in the month of July, 2001 and served for only 15 days. He (petitioner) was an intermittent worker. He used to report for duty as per his sweet will and convenience. The petitioner did not complete 240 days of work in each and every calendar year as claimed. No artificial breaks in service were provided to him at any point of time. The petitioner used to leave the job voluntarily. The workmen whose names have been disclosed by the petitioner, worked in continuity. After August, 2009 no new/fresh hands were engaged. As and when the petitioner reported for duty his services were duly utilized. Since the petitioner left the work

willingly, he is not entitled to any protection under the Act. No provision of the Act has been violated. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that during the service period, fictional breaks were given to him by the respondent/employer, which amounts to unfair labour practice. He never absented from his duties. Approximately 200 persons junior to him are serving the respondent/department.

5. Per order dated 09.7.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1998 to August, 2009 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the final termination of the petitioner by the respondent *w.e.f.* 01.09.2009 is illegal and unjustified? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Whether the claim petition is premature and in-fructuous as alleged. If so, its effect? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : No

Issue No.2 : Not pressed (see order dated 13.3.2004)

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 3

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Roshan Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were engaged for carrying out the seasonal forestry works only. He admitted that as and when he reported for duty, his services were duly engaged by the respondent. His name used to be entered in the muster roll and the wages for

the working days put in by him were paid to him. He denied that he used to report for duty as per his convenience and leave the work voluntarily. He also denied that no intentional breaks in service were provided to him by the respondent and he has instituted a phoney petition.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that from the year 1998 to 2003, the petitioner worked for 240 days in a calendar year or more. He also denied that artificial breaks in service were provided to the petitioner from time to time. He admitted that in the seniority list Ex. PW1/C, the name of the petitioner figures at serial No.125. In accordance with the said list, the persons junior to the petitioner are working under him (RW1). As and when the petitioner left the job, no notice was given to him asking him to resume his duties. Even no departmental proceedings were initiated against the petitioner.

11. Ex. PW1/B is the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2003.

12. Ex. PW1/C is copy of the seniority list of daily waged labourers of Suket Forest Division as it stood on 30.11.2011. The name of the petitioner is entered in this list at serial No.125.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. PA is the copy of the mandays chart pertaining to the petitioner which was produced by the respondent before the Conciliation Officer-cum-Labour Officer, Mandi during the conciliation proceedings.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a beldar initially in the month of July, 1998. There is no denial of the fact that the petitioner is presently working with the respondent/department continuously.

16. A glance of the statement of claim/demand unfolds that in it the petitioner/workman has nowhere pleaded that from the date/month of his initial engagement i.e. July, 1998 to August, 2009 artificial breaks in service were provided to him by the respondent/employer. Rather, the version of the petitioner is that the breaks in service were given to him by the respondent after the year 2009. Not only this, in para 2 of the claim petition, the petitioner has pleaded that from the year 1998 to the year 2009, he completed 240 days of work in each and every calendar year of his employment. In view of this assertion made by the petitioner, the question of granting artificial breaks in service (as alleged) to him by the respondent/employer does not arise.

17. The respondent has pleaded that the services of the petitioner were engaged as a casual labourer for undertaking the seasonal forestry works only. The mandays chart Ex. RW1/B clarifies that in the years 2005 and 2008, the petitioner served the respondent/department for more than 240 days in a calendar year. A person working for more than 240 days in a calendar year cannot be termed as a seasonal worker by any stretch of imagination.

18. The mandays chart Ex. RW1/B reveals that the petitioner worked for only 20 days in the year 1998. He did not work for a single day in the years 1999, 2000, 2002, 2004, 2006 and 2007. In the years 2001 and 2003 he served for only 15 and 8 days, respectively. The petitioner (PW1) in his cross-examination admitted that as and when he reported for duty his services were

duly utilized by the respondent by entering his name in the muster rolls and the wages were paid to him. In view of this admission made by the petitioner, I am at a loss to understand as to how it lies in his mouth to say that the intentional breaks in service were provided to him by his opponent. Otherwise too, if artificial/fictional breaks in service were being given to the petitioner by the respondent as claimed, then why the petitioner did not agitate the said fact earlier as well as remained tight lipped and complacent about his rights? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. Contradictory stand taken by him is also nocuous to his cause.

19. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable. No intentional break in service was provided to the petitioner by the respondent at any point of time as alleged. It appears to me that the avarice of the petitioner to derive undue benefits has forced him to prefer a totally false and baseless claim against the respondent.

20. These issues are decided against the petitioner and in favour of his adversary.

ISSUES NO. 2

21. Not pressed.

ISSUE NO.4

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO 5

24. Not pressed.

RELIEF (ISSUE NO.6)

25. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of March, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 198/2013

Shri Mahender Pal s/o Shri Shobha Singh, r/o Village & P.O. Dhandol, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P. *..Respondent.*

19-03-2014 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He and his ld. counsel are absent despite knowledge. It is already 2.40 p.m. Even the statement of claim/demand has not been filed by the petitioner till date. In view of the non-appearance of the petitioner, his ld. counsel and for want of statement of claim/demand, I have no hesitation to conclude that the petitioner/workman is not interested to pursue the matter. Consequently, he is not entitled to any relief. No intentional break in service (as per the reference) was provided to the petitioner by the respondent/employer as alleged. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 71/2014

Sh. Sarvan Singh s/o Shri Ram Lal, r/o Village Maleta, P.O. & Tehsil Shri Naina Deviji,
District Bilaspur, H.P. ..Petitioner.

Versus

The Executive Officer, Municipal Council, Shri Naina Deviji, District Bilaspur, H.P.
..Respondent.

20-03-2014 Present: None for the petitioner.

Sh. Parkash Chand Sharma, Executive Officer, Municipal Council, Shri Naina Deviji
(respondent) in person.

The respondent has made the below given statement in the Court:-

“वादी सरवण सिंह कमेटी में ठेके पर काम करता था । वह इस मुकदमा का समन मिलने के बाद मुझे मिला था । उसने बताया कि वह अदालत में पेश न होगा और यह मुकदमा न चलाना चाहता है, क्योंकि उसके साथियों ने भी ऐसे ही मुकदमें किए थे जो वापिस ले लिए हैं ।

RO & AC

P.J.”

Sd/-

20-03-2014

2. In view of the above statement, the claimant/petitioner is not entitled to any relief. The reference is dismissed as non-pressed /withdrawn.

Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Records.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 207/2010

Pardhan/ Sachiv, Himachal Pradesh Krishi Vishav Vidhyalya Mazdoor Sangh (Reg. No. 521) Palampur, Distt. Kangra, H.P.

..Petitioner.

Versus

Registrar, Chaudhary Sarwan Kumar Agriculture University, Palampur, Distt. Kangra, H.P.

1. Comptroller, Chaudhary Sarwan Kumar Agriculture University, Palampur, Distt. Kangra, H.P. *..Respondents.*

20-03-2014 Present: Sh. Anil Kumar, Pardhan of the Sangh, Sh. Ashok Kumar, Secretary of the Sangh and Sh. Mukesh Kumar, Treasurer of the Sangh with Sh. Vijay Kaundal, Adv. Sh. A. K. Nadda, D.A. for the respondents.

The case is listed for final Orders/Award today, but the ld. csl. for claimant/petitioner has made the below given statement in the Court :--

“ I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. The demand notices dated 04-01-2009 and 09-07-2009 issued on behalf of the Mazdoor Sangh are withdrawn. My clients will issue fresh demand notices to the respondents for the redressal of their grievances. The reference and claim petition are being withdrawn due to the technical defects.

RO & AC

P.J.”

Sd/-

20-03-2014

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 155/2013

Himachal Pradesh Surksha Karamchari Union (CITU), NHPC Stage-II, Sainj, Distt. Kullu, H.P. through its President.

*..Petitioner.**Versus*

The Chairman-cum-Managing Director, H.P. Ex-Serviceman Corporation, Hamirpur-177001.

1. The General Manager, NHPC, Ltd. Parbati Hydro Electric Project, Stage-II, Nagwain, Distt. Mandi, (H.P.)-175121.

...Respondents.

21-03-2014 Present: Sh. Mohan Singh, President of the petitioner union with
Sh. Rajesh Dhiman, Adv.
Sh. Ankush Kumar, Adv. vice csl. for the respondent No.1.
Sh. Harbans Singh, Dy. Manager for the respondent No.2.

The case is listed for the evidence of the petitioner, but its ld. csl. has made the below given statement in the Court today:--

“ The petitioner union is unregistered till date. Due to this technical defect, I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. The demand notice dated 19-07-2012 is withdrawn. My client(s) will issue fresh demand notice(s) to the respondents for the redressal of their grievances in case the need arises.

RO & AC

P.J.”

Sd/-

21-03- 2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 132/2011

Date of Institution : 28.11.2011

Date of Decision : 21.03.2014

Smt. Jamuna Devi w/o Shri Munshi Ram, r/o Village Panjail Kalan, P.O. and Sub Tehsil Namhol, District Bilaspur, H.P.

..Petitioner.

Versus

1. The Headmaster, Government Primary School, Sohari, P.O. and Sub Tehsil Namhol, District Bilaspur, H.P.

2. The Pardhan, School Development Managing Committee/PTA, Government Primary School, Sohari, P.O. and Sub Tehsil Namhol, District Bilaspur, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Jamuna Devi W/O Shri Munshi Ram, R/O Village Panjail Kalan, P.O. and Sub Tehsil Namhol, District Bilaspur, H.P., Helper, as per demand notice drawing wages @ Rs.1,000/- per month by the (1) The Headmaster, Government Primary School, Sohari, P.O. and Sub Tehsil Namhol, District Bilaspur, H.P. (2) The Pardhan, School Development Managing Committee/PTA, Government Primary School, Sohari, P.O. and Sub Tehsil Namhol, District Bilaspur, H.P. vide notice dated 31-03-2010 w.e.f. 01-04-2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a Mid Day Meal Worker by the respondents in Government Primary School, Sohari, District Bilaspur in the month of March, 2007. She continuously worked as such up-to 31st March, 2010 and was being paid Rs.1,000/- per month by the respondents. On the said date i.e. 31.3.2010, her services were terminated by the respondents without assigning any cogent reason and justification. She had completed more than 240 days of work in a block of 12 calendar months preceding the date of her termination. Before the disengagement of her services, neither any notice was given to her nor the retrenchment compensation was paid. During the course of employment, she discharged her duties to the entire satisfaction of the respondents. No show cause notice was ever issued to her. Neither she was charge-sheeted nor an inquiry was conducted against her for the misconduct, if any. At the time of her retrenchment, the persons junior to her were retained in service by the respondents. The latters failed to abide by the principle of ‘last come first go’. Not only this, after the disengagement of her services, the respondents appointed another lady namely Smt. Narvada w/o Shri Ram Krishan, r/o Sohari as a mid day meal worker on 25.9.2010. Smt. Narvada Devi is the relative of the respondent No.2. At the time of engaging new/fresh hands, an opportunity of re-employment was not afforded to her by the respondents. Her (petitioner’s) integrity has been made doubtful in the eyes of others due to the unlawful act of the respondents. She approached the respondents time and again for the reinstatement of her services, but in vain. From the date of her termination, she is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 31.3.2010 passed by the respondents be set aside. The latters be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since the petitioner was never appointed as a

worker by the respondent No.2. The petition is false, vague and baseless. It has not been properly verified. The petitioner neither filed any objections before the higher authorities through proper channel nor moved any application as provided under the mid day meal scheme before the higher authorities as well as the Director of Primary Education. She has no cause of action. This Court/Tribunal has no jurisdiction to hear and decide the matter. The claim petition is bad for non-joinder of the necessary parties and mis-joinder of the parties.

On merits, it has been denied that the services of the petitioner were engaged as a Mid Day Meal Worker in the month of March, 2007. Actually, the petitioner was appointed as a helper through MTA (Mother Teacher Association) in the month of March, 2008. The resolution in this regard was passed by MTA committee on 28.2.2008 under the president ship of Smt. Reeta Devi. The services of the petitioner were engaged on her request on payment of the monthly honorarium of Rs.400/- as per the strength of the children in the school as prescribed in the guidelines. The petitioner was appointed on temporary basis for three hours per day. Honorarium was paid to her as per the guidelines issued by the department. The work and conduct of the petitioner, who was a part-time helper was not only bad but also against the directions issued by them (respondents). She was warned twice or thrice to improve her behaviour, but in vain. Lastly, the petitioner was served through the official notice regarding her work and conduct. The proceedings in this regard were duly recorded in the relevant register. The strength of the children reduced to 21 (instead of 25) as provided in the mid day meal scheme/guidelines because of which the services of the petitioner were disengaged. As per the guidelines, proper procedure was adopted before the disengagement of the services of the petitioner in her presence. The petitioner had also lodged a complaint. Inquiry regarding her work and conduct was conducted by the BEEO (Block Elementary Education Officer). She did not participate in the inquiry intentionally after intimation. It stands admitted that Smt. Narvada was appointed as a helper after the disengagement of the services of the petitioner. She (Narvada) is working sincerely as per the directions of the school authorities. Smt. Prem Dei is working from the very beginning. All the dues have been paid to the petitioner. The principle of 'last come first go' or the provisions of the Act have not been flouted as alleged. The petitioner did not complete 240 or more days of work as claimed. The petition is meritless.

In these circumstances, the respondents pray that the petition in hand be dismissed with special costs quantified as Rs.10,000/—.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that no notice regarding the inquiry conducted by BEEO was served upon her.

5. Per order dated 10.1.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 01-04-2010 is illegal and unjustified as alleged? ..OPP.
2. Whether the petitioner has a cause of action? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether this Court/Tribunal has no jurisdiction to hear and decide the matter as alleged? ..OPR.
5. Whether the petition is bad for no-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Not pressed

Issue No.5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Smt. Jamuna Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Mother Teacher Association (MTA) was formed in Sohari school. Her services were engaged by the MTA as a helper in the year 2007. She denied that she was employed in the month of March, 2008. She does not know that a resolution dated 28.2.2008 regarding her appointment was passed by the MTA. She admitted that earlier to her, Shri Raj Kumar was working as a helper. Her services were engaged in place of Shri Raj Kumar. She admitted that she used to work for three hours daily and honorarium of Rs.400/- per month was paid to her at the time of her initial engagement. She also admitted that Smt. Prem Dei was working as a cook in the school. Further, she admitted that as per the guidelines issued by the Government, a helper is/was to be employed in the school in case the number of the students exceeds 25. No helper is/was to be engaged, if the children are below 25. She denied that her work and conduct was not satisfactory. She also denied that she used to quarrel with the other staff members of the school and defy her superiors. She refuted that a resolution dated 21.1.2009 in this regard was passed by the MTA and she was warned. She denied that she did not change her behaviour despite the warning. She admitted that in the month of March, 2010, the number of students in the school was reduced to 21 from 25. She feigned ignorance about the fact that the resolution dated 09.3.2010 was also passed by the school authorities and despite issuance of the repeated warnings, she did not improve her conduct. The resolutions dated 04.3.2010 and 09.3.2010 bear her signatures in the red circles. Self stated, her signatures were procured fraudulently. She admitted that per resolution dated 31.3.2010, her services were disengaged because of less number of the children. That resolution too has been signed by her. She admitted that a letter dated 31.3.2010 was written to her by the Headmaster (respondent No.1) regarding the disengagement of her services. She admitted that an application Ex. PW1/B was moved by her before the Block Education Officer, Bilaspur for re-employment. She does not know that an inquiry was conducted by the Block Education Officer. She admitted that a letter dated 25.10.2010 was written to her by the Block Education Officer to participate in the inquiry. Volunteered, such letter was received by her subsequently. She admitted that in the month of April, 2010, the State Government formed the School Managing Committees (SMCs) in place of the MTAs. She also admitted that vide resolution dated 25.9.2010, the SMC appointed Smt. Narvada Devi as a helper in Sohari school. Self stated, the strength of the students in the school had increased and Smt. Narvada Devi is the sister in law of Shri Shyam Lal, the Pardhan of SMC. She denied that the SMC had called the applications for appointing the helper and a notice in this regard was pasted on the notice board of the school. She admitted that no application for re-engagement was preferred by her. Self stated, at the time of the disengagement of her services, she was informed that as and when the strength of the students is complete, she will be

re-employed. She denied that she is not entitled to the re-engagement of her services as her previous work and conduct was not up-to the mark. She admitted that she was appointed as a part-time helper for three hours daily and for the rest of the day, she used to do the other work. She denied that now there is no work available for her in the school as well as she has instituted a phoney petition to gain the employment and derive undue benefits.

9. Conversely, Shri Madan Lal Sharma, Headmaster, Government Primary School, Sohari (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that no charge-sheet was served upon the petitioner. He admitted that on 25.9.2010, Smt. Narvada Devi was appointed as a helper in the school in place of the petitioner. He denied that false documents have been prepared to unlawfully terminate the services of the petitioner and benefit Smt. Narvada Devi.

10. RW2 is Shri Bhagat Ram Bhatia. He deposed that from the month of June, 2009 to 31.7.2012, he remained posted as Block Elementary Education Officer, Sadar Block, District Bilaspur. The complaint filed by the petitioner/workman was forwarded to him (RW2) for inquiry by the Deputy Director. He (RW2) visited Government Primary School, Sohari on 27.10.2010 to conduct the inquiry. Ex. RW1/J is the copy of the inquiry report. The inquiry report was sent by him (RW2) to the Deputy Director.

In the cross-examination, he stated that the petitioner was also called at the time of the inquiry. She did not come present because of which her statement could not be recorded during the inquiry proceedings. He denied that the inquiry was carried out by him against the rules.

11. Ex. RW1/B is the copy of the resolution dated 28.2.2008 passed by the MTA. It depicts that Shri Raj Kumar (helper) was appointed by the MTA in Government Primary School, Sohari under the mid day meal scheme. Shri Raj Kumar left the job. In his place Smt. Jamuna Devi (petitioner) was appointed as a helper in the month of March, 2008 pursuant to the application preferred by her (petitioner).

12. Ex. RW1/C is the mandays chart relating to the petitioner. It shows her total working hours and the honorarium paid to her from the month of March, 2008 to March, 2010.

13. Exts. RW1/D1 to D25 are the copies of the receipts vide which the honorarium was paid to the petitioner by the respondents.

14. Ex. RW1/E is the copy of the resolution dated 21.1.2009 passed by the MTA. It reveals that it was noticed by the school authorities that the petitioner is not discharging her duties properly and cleaning the kitchen etc. When the Headmaster (respondent No.1) enquired from the petitioner regarding her work and conduct, she (petitioner) used derogatory words against the respondent No.1 in the presence of the other teachers of the school.

15. Ex. RW1/F is the copy of the resolution dated 4th March, 2010 passed by the MTA. It unfolds that the cook and the helper were directed by the school authorities to leave only after serving the meals to the children, cleaning the kitchen and properly keeping the articles at their respective place(s).

16. Ex. RW1/G is the copy of the resolution dated 09.3.2010 passed by the MTA. This resolution has been signed by Smt. Prem Dei (Cook) and helper Smt. Jamuna Devi (petitioner). It reveals that the petitioner used to report for duty late in the school. Even she was utilizing the left

out water of the previous day (instead of the fresh water) for preparing the food. The petitioner was directed to bring fresh water for preparation of the meals and abide by the duty hours.

17. Ex. RW1/H is the copy of another resolution dated 31.3.2010 passed by the MTA. It too bears the signatures of the cook Smt. Prem Dei and the helper Smt. Jamuna Devi (petitioner). The resolution unfolds that the strength of the children in the school was reduced to 21. As per the guidelines issued by the department, if the number of students in the school is below 25, only one person viz. the cook as per the sanctioned post will work in the school. For the said reason, the petitioner was discharged from service on the same day i.e. 31.3.2010 in the afternoon.

18. Ex. RW1/I is the copy of the letter dated 31.3.2010 written to the petitioner by the respondent No.1 with respect to her discharge from service in view of the less number of students in the school.

19. Ex. RW1/J is the copy of the inquiry report dated 27.10.2010 submitted by Shri Bhagat Ram Bhatia (RW2) to the Deputy Director of Elementary Education, Bilaspur.

20. Ex. RW1/K is the copy of a letter dated 25.10.2010 written by the respondent No.1 to the petitioner. The latter was asked to visit the school and intimate the details of the non payment of the honorarium, if any to her.

21. Ex. RW1/L is the copy of the resolution dated 25.9.2010 passed by the SMC. It clarifies that the strength of the students in the school increased to 26 because of which the services of Smt. Narvada Devi were engaged as a helper in the school under the mid day meal scheme.

22. Ex. RW1/M is the copy of the mid day meal scheme.

23. Ex. RW1/N is the copy of a resolution dated 08.11.2010 passed by the school authorities. It shows that the petitioner had moved a complaint before the Labour Inspector to the effect that the honorarium has not been paid to her. A letter (Ex. RW1/K) in this regard was written to the petitioner by the respondent No.1. Since the petitioner did not send any response after the receipt of letter Ex. RW1/K, it was decided by the school authorities that another letter be written to the petitioner to clarify her position failing which action will be initiated against her for lodging the false complaint.

24. Ex. RW1/O is the copy of a letter dated 09.11.2010 written to the petitioner by the SMC after the passing of the resolution dated 08.11.2010 (Ex. RW1/N).

25. The petitioner has not placed/exhibited on the record any document evidencing that her services were engaged by the respondents as a helper in the month of March, 2007 as claimed. Rather, the documents available on the record coupled with the mandays chart Ex. RW1/C make it crystal clear that the petitioner was appointed as a part-time helper in Government Primary School, Sohari under mid day meal scheme in the month of March, 2008 and she worked as such up-to the month of March, 2010. It is not the case of the petitioner that the mandays chart Ex. RW1/C produced by the respondents is incorrect. The resolution dated 28.2.2008 passed by the MTA, the copy of which is Ex. RW1/B clarifies that the services of the petitioner were engaged in the month of March, 2008 pursuant to an application moved by her after Shri Raj Kumar (helper) left the job.

26. It is an admitted fact that the petitioner used to work for only three hours daily in the school for which she was paid the honorarium. The petitioner (PW1) in her cross-examination admitted that except the school timing of three hours, she used to do her own work. Exts. RW1/E, F and G, the copies of various resolutions passed by the MTA, make it clear that the work and

conduct of the petitioner was not up-to the mark. She did not discharge her duties properly and abide by the instructions issued by her superiors. Exts. RW1/F and G bear the signatures of the petitioner. Of course, while testifying in the Court as PW1, the petitioner has taken the plea that her signatures were procured on Exts. RW1/F and G fraudulently. If the petitioner was defrauded (as claimed), then why she did not make a mention of the said fact in her statement of claim/demand and the rejoinder or lodge any complaint against the school authorities? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth.

27. It is an admitted fact that as per the guidelines issued by the State Government, a helper (besides the cook) is to be appointed in the school, only if, the strength of the students is 25 or more. If the number of the students is less than 25, only the cook (as per the sanctioned post) will remain in the school. Admittedly, Smt. Prem Dei is serving as a cook in the school from the very beginning. The petitioner (PW1) in her cross-examination admitted that her services were disengaged by the respondents in the month of March, 2010 as the strength of the students was reduced to 21 from 25. This fact finds support from the resolution dated 31.3.2010 passed by the MTA, the copy of which is Ex. RW1/H. The resolution has also been signed by the petitioner. Ex. RW1/I is the copy of the letter dated 31.3.2010 which was handed over to the petitioner by the respondent No.1 after the passing of the resolution dated 31.3.2010 (Ex. RW1/H).

28. It is not the case of the parties that the services of the petitioner were terminated as a measure of punishment taking into account her act and conduct. A wholistic reading of the letter Ex. RW1/I shows that it is an order of discharge and not of retrenchment. At the cost of reiteration, I will like to add that the petitioner was discharged from service due to the reduction in strength of the students. Therefore, it cannot be said that the provisions of Sections 25-F, 25-G or 25-H of the Act have been flouted by the respondents.

29. Otherwise too, from the resolution dated 28.2.2008 (Ex. RW1/B), it can be gathered that the petitioner had moved an application before the school authorities for the engagement of her services as a helper under the mid day meal scheme. It is not the case of the petitioner that when the number of the students in the school increased to 25 or more, she had re-applied by preferring a written application to re-engage her services after a notice in this behalf was displayed on the notice board of the school by the School Managing Committee.

30. Such being the situation, I have no hesitation to conclude that the respondents have not contravened any provision of the Act. The petitioner was discharged from service as per the guidelines issued by the Government. She is not entitled to any relief.

31. This issue is decided against the petitioner and in favour of the respondents.

ISSUES NO.2 AND 3

32. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has no cause of action. The claim petition is not maintainable in the present form. It appears to me that the avarice of the petitioner to grab the Government job and money has forced her to prefer a totally false and baseless claim.

33. These issues are also decided against the petitioner and in favour of her opponents.

ISSUES NO.4 AND 5

34. Not pressed.

RELIEF (ISSUE NO.6)

35. As a sequel to my findings on the issues No. 1 to 3, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

36. The reference is answered in the aforesaid terms.

37. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

38. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 18/2013

Sh. Mast Ram s/o Shri Dhani Ram, r/o Village Small, P.O. Balag, Sub Tehsil Nihari, District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. *..Respondent.*

26-03-2014 Present: Sh. S.S. Sippy, A.R. for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case is listed for final arguments, but the Id. Authorised Representative for the claimant/petitioner has made the below given statement in the Court today:--

“ मैं यह reference/claim petition न चलाना चाहता हूँ ।
दाखिल दफ्तर किया जावे । मेरा बसपमदज (वादी) अपने हितों की
रक्षा के लिए प्रतिवादी को नया मांग पत्र जारी करेगा ।

RO & AC
P.J.”

Sd/- 26-03-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.(Camp at Bilaspur)**

Ref: No. : 38/2013

Sh. Yashwant Singh s/o Sh. Brij Lal, r/o Village Baddu, P.O. Doghari, Tehsil Sunder Nagar,
Distt. Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
..Respondent.

28-03-2014 Present: Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case is listed for final Orders/Award, but the Id. Authorised Representative for the petitioner/claimant has made the below given statement in the Court today:--

“मैं यह reference/claim petition न चलाना चाहता हूँ ।
दाखिल दफ्तर किया जावे ।

RO & AC
P.J.”
Sd/-

28-03- 2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 29/2014

Smt. Asha Devi w/o Shri Piar Chand, r/o V.P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

05-03-2014 Present: Sh. Vijay Kaundal, Adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that the industrial dispute involved between the parties in this reference has already been decided by this Court per Award dated 28-06-2011 passed in reference No. 150/2006 titled as Shri Sukh Dev and others –vs- The Executive Engineer, HPPWD (B&R) Division, Joginder Nagar. For the said reason, he does not want to proceed with this reference and it be dismissed as withdrawn. 2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

